

EXHIBIT

4

FREEDOM COURT REPORTING

| Page 1 | Page 3 |
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| <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 EASTERN DIVISION</p> <p>4</p> <p>5 CIVIL ACTION NO.: 3:05-CV-0681-C</p> <p>6</p> <p>7 EMORY STEVE BROWN,</p> <p>8 Plaintiff,</p> <p>9 vs.</p> <p>10 CLAIMS MANAGEMENT, INC.,</p> <p>11 Defendants.</p> <p>12 DEPOSITION OF: EMORY S. BROWN</p> <p>13 11:25 A.M.</p> <p>14 APRIL 10, 2006</p> <p>15</p> <p>16 In accordance with Rule 5(d) of The</p> <p>17 Alabama Rules of Civil Procedure, as</p> <p>18 Amended, effective May 15, 1988, I, Cindy</p> <p>19 C. Goldman, am hereby delivering to</p> <p>20 Mr. Jeffrey A. Brown the original</p> <p>21 transcript of the oral testimony taken on</p> <p>22 the 10th day of April, 2006.</p> <p>23</p> | <p>1</p> <p>2</p> <p>3</p> <p>4 STIPULATIONS</p> <p>5 (continued)</p> <p>6</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that it shall not be necessary for any</p> <p>9 objections to be made by counsel to any</p> <p>10 questions except as to form or leading</p> <p>11 questions, and that counsel for the</p> <p>12 parties may make objections and assign</p> <p>13 grounds at the time of trial or at the</p> <p>14 time said deposition is offered in</p> <p>15 evidence or prior thereto.</p> <p>16</p> <p>17 IT IS FURTHER STIPULATED AND AGREED</p> <p>18 that the notice of filing of the</p> <p>19 deposition is waived.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> |
| Page 2 | Page 4 |
| <p>1 STIPULATIONS</p> <p>2</p> <p>3 IT IS STIPULATED AND AGREED by and</p> <p>4 between the parties through their</p> <p>5 respective counsel that the deposition of</p> <p>6 Emory S. Brown, a witness in the</p> <p>7 above-entitled cause may be taken before</p> <p>8 Cindy C. Goldman, a Court Reporter and</p> <p>9 Notary Public for the State of Alabama,</p> <p>10 at 739 Main Street, Roanoke, Alabama, on</p> <p>11 the 10th day of April, 2006, commencing</p> <p>12 at 11:25 a.m., pursuant to the Alabama</p> <p>13 Rules of Civil Procedure.</p> <p>14</p> <p>15</p> <p>16 IT IS FURTHER STIPULATED AND AGREED</p> <p>17 that the signature to and the reading of</p> <p>18 the deposition by the witness is waived,</p> <p>19 the deposition to have the same force and</p> <p>20 effect as if full compliance had been had</p> <p>21 with all laws and rules of court relating</p> <p>22 to the taking of the depositions.</p> <p>23</p> | <p>1 APPEARANCES</p> <p>2</p> <p>3 Appearing On Behalf Of The Plaintiff:</p> <p>4 MR. JOHN A. TINNEY</p> <p>5 Attorney at Law</p> <p>6 739 Main Street</p> <p>7 Roanoke, Alabama 36274</p> <p>8</p> <p>9 Appearing On Behalf Of The Defendant:</p> <p>10 CARLOCK, COPELAND, SEMLAR</p> <p>11 & STAIR, L.L.P.</p> <p>12 Mr. Jeffrey A. Brown</p> <p>13 Post Office Box 139</p> <p>14 1214 First Avenue</p> <p>15 Suite 400</p> <p>16 Columbus, Georgia 31901</p> <p>17</p> <p>18 Reported By:</p> <p>19 Cindy C. Goldman</p> <p>20 Freedom Court Reporting</p> <p>21 367 Valley Avenue</p> <p>22 Birmingham, Alabama 35209</p> <p>23</p> |

1 (Pages 1 to 4)

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FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 5</p> <p style="text-align: center;">INDEX</p> <p>Witness: Page</p> <p>Emory S. Brown</p> <p>Examination by Mr. Brown.....6</p> <p>Reporter's Certificate.....179</p> <p style="text-align: center;">EXHIBITS</p> <p>(No exhibits were marked for identification, offered, or attached to the deposition.)</p> <p style="text-align: right;">Page 6</p> <p>I, Cindy C. Goldman, a Court Reporter and Notary Public for the State of Alabama, acting as Commissioner, certify that there came before me at 739 Main Street, Roanoke, Alabama, on April 10th, 2006, beginning at 11:25 a.m, Emory S. Brown, witness in the above cause, for oral examination, whereupon the following proceedings were had:</p> <p style="text-align: center;">EMORY S. BROWN</p> <p>Having been first duly (affirmed) sworn, testified as follows:</p> <p style="text-align: center;">COURT REPORTER: Usual Stipulations?</p> <p>MR. BROWN: This is the discovery deposition of Emory Steve Brown, taken pursuant to the Federal Rules of Civil Procedure, utilized for all purposes allowed thereunder.</p> <p>EXAMINATION BY MR. BROWN:</p> <p>Q. Mr. Brown, good morning.</p> | <p style="text-align: right;">Page 7</p> <p>A. Good morning.</p> <p>Q. It's still morning here. I'm on eastern time, so if I start talking about morning and afternoon, it's just because I'm a little bit further west than I usually am.</p> <p>A. Yeah.</p> <p>Q. My name is Jeff Brown. And as far as I know, we're not related?</p> <p>A. No, not as far as I know.</p> <p>Q. Okay. If we are, I wouldn't -- I would tell you I'm sorry to have to be related to me.</p> <p>A. Yeah. All my people on my daddy's side just about is dead.</p> <p>Q. Really?</p> <p>A. Yeah. I ain't got that Browns I'm kin to.</p> <p>Q. Well, I represent Claims Management, Incorporated, the Defendant in this lawsuit. And they are the worker's compensation administrator for your employer, Wal-Mart. Do you understand that?</p> <p>A. Yeah.</p> <p>Q. I'm going to ask you some questions this afternoon. If I ask you a question that you don't understand, which sometimes I'll ask confusing questions, just stop me and let me restate it --</p> <p>A. All right.</p> <p>Q. -- because I want to make sure that you know exactly what I'm looking for. Okay?</p> <p>A. All right.</p> <p>Q. And the court reporter is right -- is typing everything down. So, if you would, speak up --</p> <p>A. All right.</p> <p>Q. -- so she can hear you and I can hear you.</p> <p>A. Okay.</p> <p>Q. All right. And if you need to take a break at any time, just let me know. I know you've got some circulatory problems with your legs.</p> <p style="text-align: right;">Page 8</p> |
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2 (Pages 5 to 8)

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FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 9</p> <p>1 A. Yeah. I had an artificial 2 artery put in my leg and had a stint put 3 in my heart too. 4 Q. So, if you need to take a break, 5 just let me know. Tell me first off, 6 what is your home phone number? 7 A. I don't have a home phone 8 number. I haven't had one in six or 9 seven years. I use my mother-in-law's, 10 next door neighbor's. That's my 11 mother-in-law. I use her phone. 12 Q. Okay. 13 A. (334)863-6195. She lives just 14 right down the road from me. 15 Q. All right. Do you have a cell 16 phone? 17 A. Huh-uh. 18 Q. That's no? 19 A. I don't have no phone. 20 Q. If you have to conduct any 21 business utilizing a telephone, you got 22 to -- this is your mother-in-law's? 23 A. Mother-in-law. Either that or</p> | <p style="text-align: right;">Page 11</p> <p>1 and you didn't have any conversations 2 with anybody other than by telephone 3 about your surgery and your shoulder; is 4 that right? 5 A. Other than Victoria from 6 workman's comp. 7 Q. Okay. And she would -- did she 8 ever call you? 9 A. Yeah, she would call. 10 Q. Okay. How would she call you? 11 A. On my mother's phone. 12 Q. Okay. 13 A. Mother-in-law's phone number. 14 Q. And would they leave a message? 15 A. Uh-huh. 16 Q. And then you'd call back? 17 A. And she'd come tell me, and I'd 18 go call them back if needed to get in 19 touch with me. 20 Q. Okay. 21 A. When they set up my doctor's 22 appointments and first one thing and then 23 the other.</p> |
| <p style="text-align: right;">Page 10</p> <p>1 my mother's house. 2 Q. What's your mom's phone number? 3 A. 863-6348. 4 Q. Okay. 5 MR. TINNEY: You can continue 6 on, Jeff. I'll be right back. 7 Q. (By Mr. Brown) And if you -- do 8 you ever make any phone calls from any 9 businesses or anything like that? 10 A. No. I hardly ever even use the 11 phone unless I have to call the lawyer's 12 office or the doctors or something 13 another like that. That's about the only 14 time I use one. 15 Q. Well, in this particular case, 16 we're here predominantly talking about 17 conversations that you did or may have 18 had with somebody out at CMI. Where 19 would you have made those phone calls 20 from? 21 A. I made all my phone calls from 22 my mother-in-law's house. 23 Q. Okay. All right. So, any --</p> | <p style="text-align: right;">Page 12</p> <p>1 Q. Did you talk to her a pretty 2 good bit, Victoria? 3 A. Yeah, I talked to her just about 4 every week because I stayed in pain so 5 long, and he wanted to -- that doctor 6 they sent me to wanted to do surgery on 7 November the 1st, and she kept putting it 8 off, kept wanting two more doctors to see 9 the MRIs. And she just kept putting it 10 off and putting it off. I'd call every 11 week, and she'd say, "We're working on 12 it. We're working on it." But I was 13 still in pain, having to work every 14 night. They was wanting me to come up 15 there with one arm every night. 16 Q. Well, we'll talk about some of 17 those conversations in a little bit 18 greater detail as we get into this. 19 What is your address? 20 A. I get all my mail at Post Office 21 Box 145. 22 Q. Well, I was going to ask you the 23 street address of where you live.</p> |

3 (Pages 9 to 12)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 13</p> <p>1 A. I live on 460 Pine Valley Drive. 2 But I don't get any mail there. I get 3 all my mail at the Post Office. 4 Q. And is that Roanoke? 5 A. Uh-huh (affirmative). Post 6 Office Box 145, Roanoke 36274. 7 Q. 145? 8 A. Uh-huh. That's where I get all 9 my mail. 10 Q. And, if you would, says yeses or 11 no's. Uh-huh's and huh-uh's are kind of 12 hard to tell -- 13 A. Okay. 14 Q. -- what you said later on down 15 the road. How long have you lived on 16 Pine Valley Drive? 17 A. I've been over there about 22 18 years. 19 Q. Who lives there with you? 20 A. Just my wife. My kids are 21 grown. 22 Q. That's Deborah? 23 A. Deborah Brown.</p> | <p style="text-align: right;">Page 15</p> <p>1 Q. Both of them live in Randolph 2 County? 3 A. Yeah. 4 Q. Is Taylor's Crossroads before 5 you get to Wedowee? 6 A. Yeah. You go up here and hit -- 7 ain't that 87 up that way? 8 MR. TINNEY: 59. 9 THE WITNESS: 59. And you go up 10 there to the first cross road and take a 11 left, and he lives out there on the left. 12 Q. (By Mr. Brown) All right. 13 That's fine. Where did you live before 14 Pine Valley Drive? 15 A. I lived on Stone Avenue. 16 Q. Is that here? 17 A. Yeah, right here in Roanoke. 18 Q. How long did you live there? 19 A. My kids was really little. They 20 was just starting school. So, I imagine, 21 three or four years there. And then we 22 moved over to the trailer park, and I've 23 been at the trailer park ever since.</p> |
| <p style="text-align: right;">Page 14</p> <p>1 Q. What are your children's name? 2 A. I've got Steven Daniel Brown and 3 Benjamin Adam Brown. 4 Q. How old is Steven? 5 A. He's 30. And the baby is 29. 6 Q. Do they both live in Roanoke? 7 A. Yeah. 8 Q. Okay. What is your date of 9 birth? 10 A. 8/24/55. Well, my youngest son 11 lives up there close to Taylors 12 Crossroads. It's a little outside of 13 Roanoke. 14 Q. That's north of here, though; 15 right? 16 A. Yeah. Taylors Crossroads is 17 where he lives. And my oldest son lives 18 on -- I can't think of the name of the 19 road. 20 Q. That's okay. 21 A. Both of them is just a little 22 bit outside of Roanoke, but they're right 23 close to Roanoke.</p> | <p style="text-align: right;">Page 16</p> <p>1 Q. Okay. So, the Pine Valley Drive 2 is a mobile home? 3 A. Yeah, it's a mobile home park. 4 Q. And do you own the mobile home? 5 A. Yeah. We're paying on it. 6 Q. Tell me the highest -- and this 7 is -- I'll ask you some questions that 8 are kind of personal, and they're not 9 intended to be offensive or anything like 10 that. 11 A. All right. 12 Q. But what would be the highest 13 educational level you got? 14 A. I went to the ninth grade and 15 quit school in the ninth grade and went 16 to work. 17 Q. Where did you go to school? 18 A. Woodland. Woodland, Alabama. 19 Q. And when you got through there, 20 have you gotten any kind of a GED or 21 anything like that? 22 A. No. That's the only education 23 I've got.</p> |

4 (Pages 13 to 16)

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FREEDOM COURT REPORTING

| Page 17 | Page 19 |
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| <p>1 Q. And, again, not to be offensive, 2 but you do read and write? 3 A. Oh, yes. 4 Q. Okay. When you got out of 5 school, where was the first place you 6 went to work? 7 A. I went to work at Handley Mills 8 when I was 16. Back then you could go to 9 work when you was 16. 10 Q. And what was your job there? 11 A. I laid up fillings, stripped 12 quills, doff cloth, a little bit of 13 everything. 14 Q. Say that again. Slow down and 15 tell me that again. 16 A. Stripped quills. 17 Q. What's stripping a quill mean? 18 A. That means you've got some 19 thread left on them, and you have to put 20 it in this machine, and it strips the 21 thread off of it. 22 Q. Okay. 23 A. And doffing means when this big</p> | <p>1 right off the street down here? 2 A. It's off of 431. And I worked 3 there -- 4 Q. And does Candlewick Yarn -- is 5 that exactly what it sounds like, they 6 make wicks for candles? 7 A. They make carpet for houses and 8 cars. 9 Q. And how long did you work for 10 Candlewick? 11 A. About 22, nearly 23 years. 12 Q. What was your job there? 13 A. I worked in the shipping 14 department, packing yarn, inspecting 15 yarn, driving a forklift. 16 Q. And when you left there, where 17 did you go? 18 A. I went to Asplundh Tree 19 Surgeons. I worked with them a little 20 while. Then I went to -- 21 Q. How long did you work at 22 Asplundh? 23 A. I didn't work with them about</p> |
| Page 18 | Page 20 |
| <p>1 roll gets on there, you have to take the 2 roll off and put it on a dolly and push 3 it off. First one thing and then 4 another. When I was 16, that's what I 5 would do. 6 Q. And that's called dolly and 7 claw? 8 A. Yeah. You doff it. You had to 9 doff the whole roll off. 10 MR. TINNEY: I think it's 11 d-o-l-p-h, I believe. 12 Q. (By Mr. Brown) Okay. 13 A. Yeah. You had to doff it off 14 onto a dolly and roll it downstairs. 15 Q. All right. And how long did you 16 work at Handley Mills? 17 A. Until I was 18. I worked there 18 two years. 19 Q. Where did you go to work after 20 that? 21 A. I went to Candlewick Yarn when I 22 was 18. 23 Q. And that's the place that's</p> | <p>1 three or four months. After I lost my 2 job at Candlewick after 20-something 3 years, I was just from here to yonder. 4 Q. Why did you lose your job at 5 Candlewick? 6 A. Well, they claim I was out four 7 times in a six-month period. And they 8 was getting rid of a bunch of people, so 9 they got me. 10 Q. You didn't have to file any kind 11 of a claim or lawsuit, did you? 12 A. No. 13 Q. Okay. What did you do at tree 14 surgeons folks? 15 A. Put the wood in the chipper and 16 chipped all the wood up. After they cut 17 it down on the ground, I chipped all the 18 wood up and run the power saw. 19 Q. Did you ever have any on-the-job 20 injuries there? 21 A. Huh-uh (negative). 22 Q. Is that no? 23 A. No, I never had any injuries on</p> |

5 (Pages 17 to 20)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 21</p> <p>1 that job.</p> <p>2 Q. How about at Candlewick Yarn?</p> <p>3 A. No, not serious injuries.</p> <p>4 Q. How about Handley Mills?</p> <p>5 A. No.</p> <p>6 Q. When you left Asplundh, where</p> <p>7 did you go?</p> <p>8 A. I went to Blue Water</p> <p>9 Construction Company.</p> <p>10 Q. What did you do there?</p> <p>11 A. I was a welder's helper.</p> <p>12 Q. How long were you there?</p> <p>13 A. Well, the job -- it wasn't but a</p> <p>14 six-month job. It was a construction job</p> <p>15 that lasted six months.</p> <p>16 Q. So, after that you got laid off</p> <p>17 because the job ended?</p> <p>18 A. Yeah, the job played out.</p> <p>19 Q. Did you ever get hurt there?</p> <p>20 A. No.</p> <p>21 Q. After that, you went to work at</p> <p>22 Wal-Mart; correct?</p> <p>23 A. I went to work at Wal-Mart in</p> | <p style="text-align: right;">Page 23</p> <p>1 because my leg and shoulder wouldn't let</p> <p>2 me do it. They just put down on the</p> <p>3 reason, medical reasons.</p> <p>4 Q. And when was that?</p> <p>5 A. March of 2005 after I had my</p> <p>6 artery done in my leg. I never would</p> <p>7 have been able to use it right, so I had</p> <p>8 to quit.</p> <p>9 Q. Your marriage to Ms. Brown, is</p> <p>10 that the only marriage?</p> <p>11 A. I've been married -- November</p> <p>12 will be 32 years.</p> <p>13 Q. Congratulations.</p> <p>14 A. I got married, she was 17 and I</p> <p>15 was 19.</p> <p>16 Q. In today's age, that's something</p> <p>17 to be very proud of.</p> <p>18 A. Yeah.</p> <p>19 Q. Have you ever had any injuries</p> <p>20 to your right shoulder before?</p> <p>21 A. No.</p> <p>22 Q. Have you ever injured your left</p> <p>23 shoulder?</p> |
| <p style="text-align: right;">Page 22</p> <p>1 2001.</p> <p>2 Q. Are you still employed at</p> <p>3 Wal-Mart?</p> <p>4 A. No. After I had this surgery on</p> <p>5 my legs and a stint put in my heart and</p> <p>6 everything -- my legs won't let me walk.</p> <p>7 I can't walk very far at one time. And</p> <p>8 they went ahead and give me a medical --</p> <p>9 may as well -- medical term --</p> <p>10 Q. But you're out on like a leave</p> <p>11 of absence; right?</p> <p>12 A. No. I don't work there anymore.</p> <p>13 Q. Okay. So, you --</p> <p>14 A. Between my shoulder and my legs,</p> <p>15 I couldn't work.</p> <p>16 Q. All right. But that was -- you</p> <p>17 don't have a problem with your having to</p> <p>18 leave Wal-Mart, do you?</p> <p>19 A. No. They understood that I</p> <p>20 couldn't do it.</p> <p>21 Q. Okay. So, you had to quit the</p> <p>22 job?</p> <p>23 A. I had to quit the job, yeah,</p> | <p style="text-align: right;">Page 24</p> <p>1 A. Huh-uh (negative). But he told</p> <p>2 me, though, you know, the way my</p> <p>3 shoulders was, you know, what I done at</p> <p>4 Candlewick for all them years, it would</p> <p>5 be easy to tear it up so be careful --</p> <p>6 real careful with it.</p> <p>7 Q. Who told you that?</p> <p>8 A. The doctor. The one that done</p> <p>9 the surgery on my shoulder.</p> <p>10 Q. Dr. Howorth did?</p> <p>11 A. Dr. Howorth.</p> <p>12 Q. Howorth. Okay.</p> <p>13 A. Dr. Howorth is the one they sent</p> <p>14 me to.</p> <p>15 Q. Now, after he did the surgery,</p> <p>16 he told you what?</p> <p>17 A. He told me that it would be easy</p> <p>18 because the way I used my hands and</p> <p>19 everything all these years packing in</p> <p>20 yarn, 10, 15, 20 pounds, he said I'll</p> <p>21 just -- like my hinges and my elbows and</p> <p>22 shoulders was like, you know -- you know,</p> <p>23 in bad shape from using them all these</p> |

6 (Pages 21 to 24)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 25</p> <p>1 years. He just told me to be careful, 2 you know. 3 Q. Okay. 4 A. Before that, I hadn't had any 5 trouble. 6 Q. Before that -- before you hurt 7 it at Wal-Mart in September of 2004, did 8 you ever have any just -- 9 A. No. 10 Q. -- aches and pains with your 11 shoulders? 12 A. No, not really, not more than 13 usual. 14 Q. Did you ever have any popping or 15 creaking or anything like that? 16 A. No, not until I tore that one 17 up. 18 Q. Okay. Have you ever been in the 19 military? 20 A. Huh-uh. 21 Q. Is that a no? 22 A. No. 23 Q. And I know you did have one</p> | <p style="text-align: right;">Page 27</p> <p>1 other. 2 A. All right. 3 Q. So, if it's okay, let me finish 4 my question. 5 A. Okay. 6 Q. And then I'll let you finish 7 your answer. 8 A. All right. 9 Q. And that way we should be okay. 10 Have you ever had any prior 11 accidents such as motor vehicle 12 accidents? 13 A. I had one back in 1994. 14 Q. All right. Did you receive any 15 injuries? 16 A. Yeah, several stitches, knocked 17 out a few teeth. 18 Q. Nothing with your shoulders -- 19 A. No. 20 Q. -- or your legs or bones? Any 21 kind of a slip and fall? 22 A. No. 23 Q. Have you ever had any injuries</p> |
| <p style="text-align: right;">Page 26</p> <p>1 prior bankruptcy. But that's over with; 2 correct? 3 A. Yeah. I had it back in the 4 '80s. 5 Q. And nothing in the last seven 6 years? 7 A. Huh-uh (negative). 8 Q. No. Have you ever been arrested 9 or charged with any crime? 10 A. Nothing besides a DUI. 11 Q. Have you ever been a plaintiff 12 in another lawsuit? 13 A. No. 14 Q. This is the -- have you ever 15 been a defendant -- 16 A. This is the first time I ever -- 17 Q. Have you ever been a defendant 18 in a lawsuit? 19 A. No, sir. 20 Q. Another thing is we're talking, 21 and it's very conversational, but because 22 she's writing everything down, we need to 23 try to make sure we don't talk over each</p> | <p style="text-align: right;">Page 28</p> <p>1 at home where you had to receive a lot of 2 medical treatment? 3 A. I had appendicitis when I was 4 19. Other than that, I've always been in 5 pretty fair health. 6 Q. Now, you did have -- you did 7 have some problems several years ago with 8 alcohol; is that right? 9 A. Yeah, a long time ago back in 10 the '90s. 11 Q. Okay. Are you still drinking? 12 A. Huh-uh (negative). 13 Q. Okay. When was the last time 14 you drank? 15 A. The only thing I drink is n/a if 16 I drink anything, non-alcoholic beer, n/a 17 Q. You stopped drinking when? 18 A. '97. 19 Q. Do you still smoke? 20 A. Yeah, I still smoke. 21 Q. How much? 22 A. About a pack a day. 23 Q. And how many years have you been</p> |

7 (Pages 25 to 28)

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FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 29</p> <p>1 smoking?</p> <p>2 A. Well, I quit a year and a half</p> <p>3 before my son was born -- the last baby</p> <p>4 was born, and I've been smoking ever</p> <p>5 since.</p> <p>6 Q. So, 29 years?</p> <p>7 A. 29 years.</p> <p>8 Q. And had you stopped for a period</p> <p>9 of time and then smoked before that?</p> <p>10 A. Yeah, I had smoked, and then I</p> <p>11 quit for a year and a half.</p> <p>12 Q. And then how old were you when</p> <p>13 you started smoking?</p> <p>14 A. Probably about 16.</p> <p>15 Q. And you had stopped for a year</p> <p>16 and a half before your youngest was born?</p> <p>17 A. Uh-huh (affirmative).</p> <p>18 Q. Are you right-handed or</p> <p>19 left-handed?</p> <p>20 A. I'm left-handed.</p> <p>21 Q. So, you're still able to write</p> <p>22 okay?</p> <p>23 A. Yeah, I'm still able to write.</p> | <p style="text-align: right;">Page 31</p> <p>1 he stopped. I done it for two and a half</p> <p>2 months. And every time I'd go in there</p> <p>3 and do therapy, they was popping, and it</p> <p>4 was hurting it, and it was killing me.</p> <p>5 And he stopped them. He told them it was</p> <p>6 doing worser damage because he put screws</p> <p>7 in it. And he said the screws was</p> <p>8 rubbing my shoulder bone. And it was</p> <p>9 hurting it worse than it was doing good</p> <p>10 to it, so they stopped it.</p> <p>11 Q. All right.</p> <p>12 A. But I done it for two and a half</p> <p>13 months.</p> <p>14 Q. Now, in March of 2005, you</p> <p>15 started having some problems with your</p> <p>16 legs?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. And tell me how that</p> <p>19 started.</p> <p>20 A. Well, when I had the -- after I</p> <p>21 had my surgery, the nurse recommended me</p> <p>22 go to my regular doctor because my blood</p> <p>23 pressure was shooting sky high. And he</p> |
| <p style="text-align: right;">Page 30</p> <p>1 Q. Okay. How high can you raise</p> <p>2 your shoulder?</p> <p>3 A. Right here?</p> <p>4 Q. Yes, sir.</p> <p>5 A. I can get it up right along in</p> <p>6 here (indicating), and I have to push it</p> <p>7 on up. You know, it just don't want to</p> <p>8 go.</p> <p>9 Q. Okay.</p> <p>10 A. I just can't -- I can't go up</p> <p>11 with it.</p> <p>12 Q. Okay.</p> <p>13 A. I can push it up. But, you</p> <p>14 know, as far as picking it up on its own,</p> <p>15 I can't. It just don't want to go up.</p> <p>16 Q. And how long has it been like</p> <p>17 that?</p> <p>18 A. Ever since I had the surgery on</p> <p>19 it.</p> <p>20 Q. Did physical therapy help you at</p> <p>21 all?</p> <p>22 A. They was hurting me worse than</p> <p>23 they was helping me. That's the reason</p> | <p style="text-align: right;">Page 32</p> <p>1 said me being in pain for 63 days -- now,</p> <p>2 I'm on medication. From now on -- he</p> <p>3 said you won't never be able to get off</p> <p>4 it. I'm on blood pressure medicine,</p> <p>5 cholesterol medicine, Plavix for my</p> <p>6 heart, and I have to take a nerve pill at</p> <p>7 night to sleep because I can't sleep.</p> <p>8 Either my leg's hurting me or my shoulder</p> <p>9 is hurting me every night just about it.</p> <p>10 Q. Okay. But you --</p> <p>11 A. But I wouldn't on any medication</p> <p>12 until I tore my shoulder up.</p> <p>13 Q. But you went to -- do you</p> <p>14 think -- did your -- do you think your</p> <p>15 shoulder caused the leg problems?</p> <p>16 A. Yeah. Yeah. They told me that</p> <p>17 because my blood pressure and cholesterol</p> <p>18 and everything went up so high, that</p> <p>19 that's the reason I had trouble out of</p> <p>20 my -- he said if you don't get surgery on</p> <p>21 your legs, you're going to lose a leg.</p> <p>22 Q. What doctor told you that the</p> <p>23 leg problem was related to the shoulder?</p> |

8 (Pages 29 to 32)

FREEDOM COURT REPORTING

Page 33

1 A. Well, Dr. Bill Cayple said my
2 blood pressure was -- caused my arteries
3 to do the way they was doing because it
4 shot up and wouldn't come back down.

5 Q. Okay. And what doctor told you
6 that your blood pressure was related to
7 your shoulder?

8 A. Well, he just said being in pain
9 for so long caused it to go up, and he
10 never could get it regulated.

11 Q. When did you start taking blood
12 pressure medication?

13 A. I went to him in February. He
14 recommended me to another doctor in
15 Opelika to do a heart catheter. Well,
16 when he was doing the heart catheter,
17 they found out I had 85 percent blockage
18 in my heart. So, they put a stint in it
19 and sent me back home. Scheduled me back
20 for ten days later. I went back, and
21 Dr. Lazenby cut me from here to there and
22 put an artificial artery in this whole
23 left leg and hit a nerve in this knee

Page 34

1 (indicating). And I have no feelings
2 from the knee down on this leg.

3 Q. Okay. And when you say "from
4 here to here," they cut you from the hip
5 bone?

6 A. They cut me all the way across
7 here. Right here all the way up and
8 replaced this whole artery (indicating).

9 Q. Okay. All right. Right there
10 where your --

11 A. They cut me right across there
12 (indicating).

13 Q. Okay. Let the record reflect
14 that it's on the left leg.

15 A. Yeah, from my groin down at the
16 top of my knee all the way up to here
17 (indicating).

18 Q. Okay. And they took a vein or
19 an artery out of your leg?

20 A. Yeah, replaced with an
21 artificial artery. It's an artificial
22 bypass is what it was called.

23 Q. Okay. And before you did that,

Page 35

1 you had a stint put in your heart; right?

2 A. Yeah. They found out I had to
3 have a stint.

4 Q. Because you had 85 percent
5 blockage?

6 A. Yeah. Dr. Rhodes went in there
7 and done the heart catheter, and he found
8 that. And he went ahead and fixed that,
9 and they sent me home. Ten days later,
10 he sent me back to do my leg.

11 Q. Okay.

12 A. And I just ain't got no
13 circulation. He said they may -- I may
14 just be having deteriorating arteries in
15 my leg. They're not sure.

16 Q. Okay. But the artery condition
17 wasn't caused by the shoulder?

18 A. No. But he just said my blood
19 pressure was causing that.

20 Q. Okay. And the stint in your
21 heart was not caused -- the blockage
22 wasn't caused by the shoulder?

23 A. No. But they just -- when they

Page 36

1 went in there, they just found out all --
2 I had all the different problems because
3 they couldn't find any circulation in my
4 legs. The first thing, he couldn't find
5 any circulation.

6 Q. Okay. And you understood that
7 that was because you had blockage in an
8 artery --

9 A. Yeah.

10 Q. -- going down into your leg, and
11 you weren't getting blood supply down
12 there?

13 A. I didn't even know I needed the
14 stint until I went in -- until he went
15 in.

16 Q. And that was your primary doctor
17 down at Woodland Clinic; is that right?

18 A. Dr. Bill Cayple sent me to
19 Dr. Lazenby in Opelika.

20 Q. Okay.

21 A. And him and Dr. Rhodes --
22 Dr. Rhodes done the stint, and
23 Dr. Lazenby done the artery.

9 (Pages 33 to 36)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 37</p> <p>1 Q. Okay. And Dr. Rhodes was at 2 Auburn Cardiology? 3 A. Uh-huh. He's the heart doctor. 4 Q. Okay. And you had that surgery 5 done in Opelika? 6 A. Yeah, both of them. 7 Q. All right. And Dr. Lazenby -- 8 A. Lazenby. 9 Q. Lazenby. 10 (A short discussion was had.) 11 THE WITNESS: He said when he 12 went in my shoulder, you know, it had 13 been so long, 63 days, it was so full of 14 bursitis and everything, there wasn't 15 nothing he could do but put pins in it. 16 He couldn't laser it back. It was too 17 late. 18 Q. (By Mr. Brown) Who said that? 19 A. Dr. Howorth, the one that 20 workman's comp sent me to. 21 Q. Okay. We'll talk about 22 Dr. Howorth in a minute. I'm trying to 23 keep --</p> | <p style="text-align: right;">Page 39</p> <p>1 the 4th, and I think the other one was 2 done on the 14th. He sent me home for 3 ten days after he done the stint. He 4 told me to rest for ten days and come 5 back and they'd do my leg. 6 Q. So, they did the stint first and 7 then did -- 8 A. Then the leg. 9 Q. Now, you've had problems with -- 10 documented problems with some blood 11 pressure since like '99 or 2000, back to 12 there; is that right? 13 A. No. I wasn't taking any kind of 14 medicine until I hurt my shoulder. I 15 wasn't on no kind of medication. But 16 when I got there to do the surgery, it 17 was running 150 over 100, and they was 18 worried about me having a stroke or a 19 heart attack. 20 Q. Okay. Do you remember having a 21 stress test back in 2002? 22 A. Yeah, sure did. They thought I 23 had a blockage in my heart then, but come</p> |
| <p style="text-align: right;">Page 38</p> <p>1 A. Yeah. 2 Q. I try to keep them all straight. 3 I still want to talk about Woodland Rural 4 Health Clinic. That's your primary 5 physician? 6 A. That's the one I go to, yeah. 7 Q. All right. And that's when -- 8 you first went down there having problems 9 with your legs in about February of 2005; 10 right? 11 A. Yeah. That's when he sent me to 12 them, yeah. 13 Q. And he is the one who referred 14 you to Dr. Lazenby? 15 A. Uh-huh (affirmative). 16 Q. All right. And that's also 17 Dr. Caypleess? 18 A. Dr. Bill Caypleess. 19 Q. Okay. Bill Caypleess, 20 C-a-y-p-l-e-s-s. And then you had that 21 surgery on your left leg about a year 22 ago, March of '05? 23 A. Yeah. Had one of them done on</p> | <p style="text-align: right;">Page 40</p> <p>1 to find out, it was just closed up. And 2 they ballooned them out and opened them 3 back up. 4 Q. Okay. So, you had like an 5 angioplasty then? 6 A. Yeah, uh-huh. In 2002, I think. 7 Q. Who did that? 8 A. Dr. Lazenby. 9 Q. Same one who did -- 10 A. Uh-huh (affirmative). 11 Q. -- the surgery on your leg? 12 A. Uh-huh (affirmative). 13 Q. Is that yes? 14 A. Yes. 15 Q. Okay. And then after you've had 16 both of the surgeries, your heart and 17 your leg, you have not been able to go 18 back to work? 19 A. No. 20 Q. And that's because you can't 21 stand up or walk for a period of time? 22 A. I can't stand up and walk, and I 23 couldn't use my shoulder. So, there was</p> |

10 (Pages 37 to 40)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 41</p> <p>1 no need, you know.</p> <p>2 Q. Well, before you had the surgery</p> <p>3 on your leg and your heart, you were</p> <p>4 working light duty; right?</p> <p>5 A. Oh, yeah. They had me up there</p> <p>6 working with a sling. I was just working</p> <p>7 light duty, door greeting.</p> <p>8 Q. Okay. But you were still able</p> <p>9 to do that light-duty job?</p> <p>10 A. Yeah. Until I had my surgery on</p> <p>11 my leg, yeah.</p> <p>12 Q. So, if you had not had the</p> <p>13 surgery on your leg or the stint put in</p> <p>14 your heart, you could still be a greeter?</p> <p>15 A. Well, he told me, though, if I</p> <p>16 didn't have it done, though, I could lose</p> <p>17 a leg.</p> <p>18 Q. Well, I understand that. I'm</p> <p>19 not suggesting that you shouldn't have</p> <p>20 had the surgery done on your leg.</p> <p>21 A. Yeah.</p> <p>22 Q. But if your leg had not bothered</p> <p>23 you --</p> | <p style="text-align: right;">Page 43</p> <p>1 told you that the shoulder -- that the</p> <p>2 leg circulation problem and the heart</p> <p>3 stint affected your ability to heal in</p> <p>4 the shoulder?</p> <p>5 A. No, they didn't say nothing</p> <p>6 about it affecting it. He just told me</p> <p>7 when he went in it was so messed up that</p> <p>8 he had to put plastic -- put pins in it</p> <p>9 and said it never would be right.</p> <p>10 Q. Okay. Now, you got hurt at</p> <p>11 Wal-Mart in September of 2004?</p> <p>12 A. Uh-huh, September 2004.</p> <p>13 Q. And it was, I think, the 28th or</p> <p>14 maybe early in the morning?</p> <p>15 A. 27th or 28th.</p> <p>16 Q. Okay. It was about 4:00 o'clock</p> <p>17 in the morning?</p> <p>18 A. Uh-huh (affirmative).</p> <p>19 Q. You were working the overnight</p> <p>20 shift?</p> <p>21 A. Yeah.</p> <p>22 Q. And you were unloading a truck?</p> <p>23 A. Yeah, unloading a produce truck.</p> |
| <p style="text-align: right;">Page 42</p> <p>1 A. Yeah.</p> <p>2 Q. Just pretend that it -- your leg</p> <p>3 never had that problem.</p> <p>4 A. Yeah.</p> <p>5 Q. You could still be working as a</p> <p>6 greeter?</p> <p>7 A. If my legs would let me, yeah.</p> <p>8 Q. Okay. That's what I was curious</p> <p>9 about.</p> <p>10 A. Yeah.</p> <p>11 Q. All right. So, the reason that</p> <p>12 you had to quit was more your leg?</p> <p>13 A. And the shoulder.</p> <p>14 Q. Okay. But more your leg than</p> <p>15 your shoulder; right?</p> <p>16 A. Yeah.</p> <p>17 Q. That was yes?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. How are your legs now?</p> <p>20 A. Oh, they hurt me every day. My</p> <p>21 ankles and knee swells up on me every</p> <p>22 night.</p> <p>23 Q. Have any of the doctors ever</p> | <p style="text-align: right;">Page 44</p> <p>1 Q. Since the day you hurt your</p> <p>2 shoulder, have you kept a written diary</p> <p>3 at home?</p> <p>4 A. No.</p> <p>5 Q. And you haven't taken any kind</p> <p>6 of notes?</p> <p>7 A. Nothing except all my doctor's</p> <p>8 names and stuff like that.</p> <p>9 Q. Okay. Then do you keep any kind</p> <p>10 of a calendar indicating when you've been</p> <p>11 to the doctors and conversations with</p> <p>12 anybody?</p> <p>13 A. No, not lately.</p> <p>14 Q. Have you ever?</p> <p>15 A. Not besides what I brought</p> <p>16 Mr. Tinney.</p> <p>17 Q. Okay. Did you bring Mr. Tinney</p> <p>18 a calendar or anything that writes some</p> <p>19 of those dates down?</p> <p>20 A. No, I just got the medical</p> <p>21 report.</p> <p>22 Q. You just brought him bills and</p> <p>23 things that you've received from the</p> |

11 (Pages 41 to 44)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 45</p> <p>1 doctors; is that right?</p> <p>2 A. Medical reports, yeah.</p> <p>3 Q. Okay. Now, you were working,</p> <p>4 unloading a produce truck on the 28th?</p> <p>5 A. Uh-huh, yes.</p> <p>6 Q. Tell me how the accident</p> <p>7 happened.</p> <p>8 A. Well, the truck backed in. And</p> <p>9 it was supposed to have been stretched</p> <p>10 wrapped and tied down. And it was</p> <p>11 thrown all out in the floor. And we was</p> <p>12 trying to salvage what produce we could.</p> <p>13 And I had a pallet, and another boy named</p> <p>14 Josh Denton was on the other side of the</p> <p>15 pallet. He was picking up. I was</p> <p>16 picking up the 40-pound sacks of</p> <p>17 potatoes. I got them stacked up a little</p> <p>18 over waist high. And they went to</p> <p>19 falling. I tried to catch them, and they</p> <p>20 just pinned me up against the wall and</p> <p>21 popped my shoulder.</p> <p>22 Q. Okay. And when you say,</p> <p>23 "they're supposed to be stretch wrapped,"</p> | <p style="text-align: right;">Page 47</p> <p>1 A. He was the assistant manager --</p> <p>2 night manager at night that night. So,</p> <p>3 we went to his office and filled out a</p> <p>4 report.</p> <p>5 Q. That was like the first report</p> <p>6 of the incident or something like that?</p> <p>7 A. Yeah, just as soon as it</p> <p>8 happened.</p> <p>9 Q. Okay. And did you go home?</p> <p>10 A. No. He got a man off the floor</p> <p>11 crew to take me out to the emergency room</p> <p>12 and dropped me off and left me.</p> <p>13 Q. Okay.</p> <p>14 A. My wife got off work and didn't</p> <p>15 even know where I was at.</p> <p>16 Q. Who took you to the hospital?</p> <p>17 A. Boy off the floor crew, Glen --</p> <p>18 I don't -- I can't remember his last</p> <p>19 name. His name was Glen. He got him to</p> <p>20 take me out there and put me out.</p> <p>21 Q. Okay. Well, did that make you</p> <p>22 mad?</p> <p>23 A. Well, I thought, you know,</p> |
| <p style="text-align: right;">Page 46</p> <p>1 does that mean they're supposed to be</p> <p>2 stacked up and wrapped like in cellophane</p> <p>3 plastic or something?</p> <p>4 A. They're supposed to be wrapped</p> <p>5 all the way up and tied down. They was</p> <p>6 not wrapped. They was just throwed all</p> <p>7 out in the truck.</p> <p>8 Q. Okay. So, y'all were trying to</p> <p>9 clean up a mess?</p> <p>10 A. We was trying to salvage -- we</p> <p>11 was trying to clean up a mess.</p> <p>12 Q. And you immediately notified</p> <p>13 somebody, didn't you?</p> <p>14 A. Yeah. Josh was about as far as</p> <p>15 from me to her. We was right side by</p> <p>16 side. He heard it when it popped. And</p> <p>17 the supervisor was on -- he was on the</p> <p>18 truck about a minute or two after it</p> <p>19 happened.</p> <p>20 Q. Who was that?</p> <p>21 A. Chris Cheatwood.</p> <p>22 Q. And is he one of the assistant</p> <p>23 managers?</p> | <p style="text-align: right;">Page 48</p> <p>1 somebody from management should have went</p> <p>2 with me, you know.</p> <p>3 Q. Okay. But they did send you to</p> <p>4 the hospital. And that was Randolph</p> <p>5 Medical Center.</p> <p>6 A. Yeah.</p> <p>7 Q. Is that the hospital up in</p> <p>8 Wedowee?</p> <p>9 A. Right out here. Right out here</p> <p>10 on 22.</p> <p>11 Q. All right.</p> <p>12 A. And they x-rayed it. And he</p> <p>13 said he didn't see any broke bone. He</p> <p>14 said it could be just be a pulled muscle.</p> <p>15 And they give me a shot. And my wife got</p> <p>16 off work at 8:00, and she come and picked</p> <p>17 me up after they told her at Wal-Mart</p> <p>18 where I was at.</p> <p>19 Q. Okay. So, she want out --</p> <p>20 A. She didn't even know where I was</p> <p>21 at.</p> <p>22 Q. Did she go out to the store?</p> <p>23 A. Yeah, she went to the store,</p> |

12 (Pages 45 to 48)

FREEDOM COURT REPORTING

| Page 49 | Page 51 |
|--|---|
| <p>1 looking for me to pick me up. 2 Q. Okay. 3 A. Because she worked at night. 4 Q. So, y'all both worked at night? 5 A. Yeah. She worked at Candlewick. 6 She dropped me off and then she'd come 7 pick me up in the morning. She didn't 8 even know I was out there. Nobody 9 bothered to call her and tell her I was 10 out there or nothing. 11 Q. So, she came and got you at 12 the -- does that make you mad that nobody 13 called your wife? 14 A. Yeah, it really -- you know, she 15 come up there looking for me, and they 16 said, "He's in the emergency room." And 17 she didn't -- she freaked out because she 18 didn't know what was going on. You know, 19 nobody let her know. 20 Q. How long did you have to wait 21 for her to come get you at the emergency 22 room? 23 A. I got up at the emergency room</p> | <p>1 sent me to a company doctor, Dr. Shirah, 2 on the next following Monday. 3 Q. Okay. What day of the week did 4 you get hurt, do you remember? 5 A. I believe it was on a Wednesday 6 night. 7 Q. Okay. 8 A. Because I know I worked Sunday 9 through -- Sunday through Thursdays. I 10 think it was on a Tuesday night or a 11 Wednesday night, the middle of the week. 12 MR. BROWN: Can we take a few 13 minutes? 14 (A short break was taken.) 15 Q. (By Mr. Brown) All right. Well, 16 you went back by the store and dropped 17 off the paperwork? 18 A. Yeah. 19 Q. And then you went home for a 20 couple of days? 21 A. Yeah, because I didn't have but 22 two more days left in that week. 23 Q. Okay. And then you went to a</p> |
| Page 50 | Page 52 |
| <p>1 at 5:00, and she got off work at 6:00. 2 She was out there a little after 6:00. 3 Q. Had you already been seen by the 4 doctor when she got there? 5 A. They done the x-ray and then 6 give me a shot of Demerol. 7 Q. So, how long were you waiting on 8 her before she got there? 9 A. Probably 45 minutes to an hour. 10 Q. Okay. So, it wasn't too bad? 11 A. And then I had to bring 12 paperwork back to Wal-Mart. 13 Q. So, y'all left the hospital and 14 went back to Wal-Mart? 15 A. Yeah. 16 Q. Okay. Did you go inside and 17 give the documents to somebody? 18 A. Yes. 19 Q. Who did you give them to? 20 A. Personnel manager and the 21 manager. They told me to go ahead and 22 take the next two days off, you know, to 23 see how it was going to do. And they</p> | <p>1 doctor? 2 A. They sent me to Dr. Shirah on 3 Monday morning. 4 Q. Okay. Did you have any other 5 appointments before that that you missed 6 or that you couldn't go to? 7 A. No. They just told me to take 8 two days off and they would set me up 9 with Dr. Shirah on Monday morning. 10 Q. Okay. Who called you and told 11 you to go see Dr. Shirah? 12 A. Charlotte Woody. She's the 13 personnel manager. She set it up, the 14 appointment up. 15 Q. And after you talked to Ms. 16 Woody and she told you to go see 17 Dr. Shirah, did you have any other 18 contact with her, or did you start 19 working with the people out at CMI? 20 A. I didn't have -- I took the two 21 days off and then went out there at his 22 office on Monday. She called and made me 23 an appointment and told me at home --</p> |

13 (Pages 49 to 52)

FREEDOM COURT REPORTING

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|---|---|
| <p style="text-align: right;">Page 53</p> <p>1 called me at home and told me what time 2 the appointment was -- to be there. 3 Q. All right. And then you went 4 out there to see him on, I think, October 5 the 4th or October the 1st? 6 A. It was on a Monday. 7 Q. Okay. 8 A. And he treated me -- he told me 9 to take a week off and treated me for a 10 muscle pull. 11 Q. Okay. And gave you some 12 medication; right? 13 A. Yeah. He gave me something for 14 infection and some pain medicine. 15 Q. Okay. And that was the first 16 time you saw him was on October the 4th? 17 A. Yeah, it was on a Monday. 18 Q. Okay. 19 A. He treated me for a week. 20 Q. And my question was: After 21 Ms. Woody called you and told you to go 22 see Dr. Shirah, who scheduled the rest of 23 your doctor's appointments and who did</p> | <p style="text-align: right;">Page 55</p> <p>1 Q. All right. So, you went to 2 Dr. Shirah on the 4th? 3 A. Uh-huh (affirmative). 4 Q. And he said that it was -- he 5 would keep you out of work for four days? 6 A. Uh-huh (affirmative). 7 Q. And he said that it was a 8 shoulder sprain; right? 9 A. He said it was either that or a 10 pulled muscle. 11 Q. Pulled muscle. He gave you some 12 Motrin and some other things for pain; 13 correct? 14 A. Yeah. 15 Q. All right. And you went back on 16 the 8th, which was four days later? 17 A. Yeah. 18 Q. And that's when he said that you 19 could go back to work on the 10th doing 20 light duty? 21 A. Yeah. And come back to see him 22 on that Friday. 23 Q. Okay. And you went back on the</p> |
| <p style="text-align: right;">Page 54</p> <p>1 you have contact with about what doctor 2 to go to next? 3 A. Well, after I went to him for a 4 week, he told me to come back the next 5 following week and he'd look at me again. 6 And I went back the next following week. 7 And he told me if they had anything I 8 could do with one arm, not to pick up 9 nothing over five pounds, and I could go 10 back and work with one arm. So, I went 11 back. They put me to zoning, stuff like 12 that. 13 Q. What is zoning? 14 A. When you pull all your stuff on 15 your shelf to the front and everything 16 and straighten stuff out. 17 Q. Okay. 18 A. But I was using this left arm so 19 much, after two days, I couldn't even use 20 it, it was hurting so bad. 21 Q. All right. 22 A. So, they put me to door 23 greeting.</p> | <p style="text-align: right;">Page 56</p> <p>1 15th? 2 A. That's right. 3 Q. About a week later? 4 A. Yeah. 5 Q. You were still having pain? 6 A. Yes. 7 Q. And that's the first time he 8 thought that it could possibly be a tear; 9 right? 10 A. Yeah. He said we need to go get 11 an MRI. 12 Q. Okay. He kept you on the 13 medications. And you were still working 14 light duty; right? 15 A. Yeah, just door greeting. And 16 I'd take a buggy and go around with my 17 good hand and pick up things that was in 18 the wrong spot and push with one hand. I 19 wasn't using my arm. 20 Q. And then you had an MRI done on 21 the 19th? 22 A. At Oxford? 23 Q. In Oxford. You went back and</p> |

14 (Pages 53 to 56)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 57</p> <p>1 saw Dr. Shirah one more time?</p> <p>2 A. Yeah.</p> <p>3 Q. And you told him --</p> <p>4 A. That's when he said there's</p> <p>5 nothing he could do.</p> <p>6 Q. What did he say?</p> <p>7 A. He said, "You've got to go to an</p> <p>8 orthopedic surgeon. There's nothing I</p> <p>9 can do for you. It's got to be -- have</p> <p>10 surgery."</p> <p>11 Q. Okay. Now, before we move on to</p> <p>12 the next doctor, after you saw Dr. Shirah</p> <p>13 on October the 4th -- well, strike that.</p> <p>14 You got hurt on September the</p> <p>15 28th, and you went to see Dr. Shirah on</p> <p>16 October 4th?</p> <p>17 A. Uh-huh, on Monday.</p> <p>18 Q. So, during that time frame, did</p> <p>19 you have any contact with anybody out at</p> <p>20 CMI in Arkansas.</p> <p>21 A. Huh-uh (negative).</p> <p>22 Q. And you found out about going to</p> <p>23 Dr. Shirah by Charlotte Woody at the</p> | <p style="text-align: right;">Page 59</p> <p>1 with your shoulder?</p> <p>2 A. Every week. She'd ask me, you</p> <p>3 know. And as soon as he looked at the</p> <p>4 MRI, he got on the phone to</p> <p>5 Ms. Charlotte -- to Ms. Victoria himself,</p> <p>6 workman's comp -- Dr. Shirah did and told</p> <p>7 her that I had to have surgery and needed</p> <p>8 it immediately.</p> <p>9 So, she was going to send me to</p> <p>10 Gadsden. And I asked him could he call</p> <p>11 and see if he could get somewhere closer.</p> <p>12 So, she called him back. And they sent</p> <p>13 me to Alex City, which is a little</p> <p>14 closer.</p> <p>15 Q. Who were they going to send you</p> <p>16 to in Gadsden?</p> <p>17 A. They never did say. They</p> <p>18 just -- he asked them could they get me</p> <p>19 somebody closer, so they sent me to Alex</p> <p>20 City.</p> <p>21 Q. All right. And you were talking</p> <p>22 to Dr. Shirah about what orthopedic</p> <p>23 doctor you were going to go to?</p> |
| <p style="text-align: right;">Page 58</p> <p>1 store?</p> <p>2 A. Charlotte Woody, she set me --</p> <p>3 the appointment up with him.</p> <p>4 Q. And did you talk to anybody else</p> <p>5 at the store about doctors and</p> <p>6 appointments other than Charlotte Woody?</p> <p>7 A. Now, she's usually the one that</p> <p>8 set up the appointments besides</p> <p>9 Ms. Victoria. She'd call Victoria, and</p> <p>10 Victoria would tell her who to send me to</p> <p>11 or whatever.</p> <p>12 Q. Okay.</p> <p>13 A. I don't even -- I don't even</p> <p>14 know what her last name is. Just</p> <p>15 Victoria is all I know. She's with</p> <p>16 workman's comp.</p> <p>17 Q. And did you talk to her very</p> <p>18 many times?</p> <p>19 A. I talked to her several, several</p> <p>20 times.</p> <p>21 Q. Okay. We'll get into those.</p> <p>22 How many times did you talk to Ms. Woody</p> <p>23 about doctor's appointments and problems</p> | <p style="text-align: right;">Page 60</p> <p>1 A. Uh-huh (affirmative).</p> <p>2 Q. That was yes?</p> <p>3 A. Yeah. That was as soon as he</p> <p>4 brought them in there and showed them to</p> <p>5 me. He said I'll call Ms. Victoria and</p> <p>6 get her to send you to another doctor --</p> <p>7 Q. Okay.</p> <p>8 A. -- surgery.</p> <p>9 Q. All right. So, who called you</p> <p>10 and told you that you had an appointment</p> <p>11 with Dr. Howorth?</p> <p>12 A. Ms. Victoria when I got home</p> <p>13 from Dr. Shirah's office, she called me</p> <p>14 at home -- at my mother-in-law's.</p> <p>15 Q. Okay. So, was that the first</p> <p>16 time you ever talked to Ms. Victoria?</p> <p>17 A. Yeah. She told me where to go</p> <p>18 and who to go to.</p> <p>19 Q. And that was on about October</p> <p>20 the 22nd?</p> <p>21 A. Uh-huh, I believe it was. It</p> <p>22 was on a Wednesday because he said he was</p> <p>23 full up on surgery the next day. He</p> |

15 (Pages 57 to 60)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 61</p> <p>1 wanted me in on surgery on Monday the 2 next following week. 3 Q. Say that again. 4 A. I said that he does surgeries on 5 Mondays and Thursdays, and this was 6 Wednesday. And he said he couldn't fit 7 me in on Thursday, but he wanted me in 8 surgery on Monday. And before I could 9 get back home, Victoria had done called 10 and cancelled it. 11 Q. Well, did Dr. Howorth tell you 12 that he wanted to do surgery before he 13 ever saw you? 14 A. Huh-uh (negative). After he 15 seen me -- 16 Q. Okay. I'm not there yet. 17 You're jumping ahead of me a little bit. 18 I'm sorry. I was confused. 19 A. Yeah. 20 Q. I'm talking about on October the 21 24th -- I mean, the 22nd when you went to 22 Dr. Shirah for the last time -- 23 A. Uh-huh.</p> | <p style="text-align: right;">Page 63</p> <p>1 on that next Monday. 2 Q. I understand. I understand. 3 But if you can, don't jump ahead of me 4 too much. I get confused kind of easy. 5 A. All right. I ain't used to 6 this. 7 Q. I understand. Like I say, I'm 8 not trying to trick you. I'm not here 9 trying to trick you. I just want to 10 learn a little bit more about your case. 11 A. Yeah. 12 Q. So, if you -- you know, don't 13 get frustrated. If you want to take a 14 break -- we've been going for, you know, 15 45 minutes. 16 A. I'm fine. 17 Q. Okay. So, Ms. Victoria called 18 you and told you to go and see 19 Dr. Howorth? 20 A. Howorth. 21 Q. Howorth. Okay. 22 A. Yeah. 23 Q. And I'll probably mispronounce</p> |
| <p style="text-align: right;">Page 62</p> <p>1 Q. -- and he looked at the MRI -- 2 A. Uh-huh. 3 Q. And looked at the results and 4 said, "Patient needs to be referred to an 5 orthopedist" -- 6 A. Uh-huh, that's true. 7 Q. All right. So, you left his 8 office on the 22nd? 9 A. Yeah. 10 Q. Then Ms. Victoria called you -- 11 A. At home. 12 Q. -- at home and said go see -- 13 A. Dr. Howorth in Alex City. 14 Q. In Alexander City? 15 A. Alexander City. 16 Q. All right. And said your 17 appointment is for -- 18 A. It was on a Wednesday. 19 Q. Okay. And was that October the 20 26th or 27th? 21 A. Somewhere around there. 22 Q. Okay. 23 A. Because he wanted me in surgery</p> | <p style="text-align: right;">Page 64</p> <p>1 it all day. And the first time you went 2 to see him was on October the 27th? 3 A. Yeah. I took the MRI with me. 4 Q. All right. And you took the MRI 5 film with you? 6 A. Yeah. 7 Q. And you got that from Open MRI, 8 from the people who actually do it? 9 A. And Dr. Shirah looked at it, and 10 he give it to me to take with me. 11 Q. So, you talked to Ms. Heppes, 12 Ms. Victoria -- 13 A. Uh-huh (affirmative). 14 Q. -- sometime around the 22nd? 15 A. Yeah, it was -- she set me up an 16 appointment for the Wednesday. But I -- 17 it was around the 22nd when I got through 18 with Dr. Shirah. That's the last time I 19 had to go see him because he said he 20 couldn't help me. 21 Q. Did anybody from out at CMI call 22 you on September the 30th? Do you 23 remember?</p> |

16 (Pages 61 to 64)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 65</p> <p>1 A. I don't remember. I don't 2 remember nobody calling me. 3 Q. Okay. 4 A. Unless it was Charlotte to tell 5 me I had an appointment with Dr. Shirah. 6 Q. That's fine. I understand. 7 Now, before you went to 8 Dr. Howorth, you were still working light 9 duty? 10 A. Yeah. 11 Q. Okay. And they had paid you 12 some temporary total -- they had made a 13 payment to you for the days you were out 14 of work; is that right? 15 A. Oh, they give me, I think, it 16 was 200 and something dollars. And then 17 when I had surgery, they give me 60 18 bucks. 19 Q. But they paid you for the days, 20 though, that you were out of work; is 21 that right? 22 A. Yeah. 23 Q. Okay.</p> | <p style="text-align: right;">Page 67</p> <p>1 injury, that was paid by worker's comp; 2 right? 3 A. Yeah, they paid for that. 4 Q. All right. And they paid all 5 the bills for Dr. Shirah? 6 A. Yeah. 7 Q. And they paid for the MRI? 8 A. Yeah. 9 Q. Okay. 10 A. Well, they sent me some of the 11 bills, and I just took them to Wal-Mart. 12 Q. Okay. Well, I understand. But 13 they ultimately paid? 14 A. Yeah, they ultimately paid. 15 Q. You didn't have to pay any of 16 that out of your pocket? 17 A. Huh-uh, they took care of that. 18 Q. Okay. All right. 19 All right. So, the first time 20 you met with Dr. Howorth was on the 27th? 21 A. Uh-huh (affirmative). 22 Q. And you told him how the 23 accident had happened, right --</p> |
| <p style="text-align: right;">Page 66</p> <p>1 A. After I had to wait -- you know, 2 I think you had to wait a five-day grace 3 period before they start paying. 4 Q. Okay. And you were still 5 working the whole time even when you were 6 treating with -- seeing Dr. Howorth -- 7 A. Yeah. 8 Q. -- before the surgery? 9 A. Yeah. 10 Q. Okay. 11 A. I had to go up there with one 12 arm every night in pain. They didn't 13 want to pay me workman's comp. 14 Q. Well, the doctor is the one who 15 told you you could go back to work; 16 right? 17 A. He said, yeah, as long as I 18 didn't use that shoulder. 19 Q. And that was Dr. Shirah? 20 A. Yeah. 21 Q. Okay. And as far as you know, 22 the emergency room bill for the first 23 time you got hurt -- for the day of the</p> | <p style="text-align: right;">Page 68</p> <p>1 A. Uh-huh (affirmative). 2 Q. -- that you were cleaning up a 3 produce truck? 4 A. Uh-huh. 5 Q. And told him that you had been 6 treating with Dr. Shirah for a few days 7 and that that wasn't working? 8 A. Yes. 9 Q. He looked at the MRI and showed 10 that there was a tear in the shoulder. 11 And at that time, you told him that you 12 had not had any problems with your right 13 shoulder; correct? 14 A. No, I hadn't had any trouble. 15 Q. Now, on that first visit, he 16 wanted you to go to physical therapy even 17 before surgery, didn't he? 18 A. Ms. Victoria did. 19 Q. Well, Dr. Howorth didn't tell 20 you that he -- 21 A. He wanted me in surgery. This 22 was on Wednesday. He wanted me in 23 surgery the next following Monday.</p> |

17 (Pages 65 to 68)

FREEDOM COURT REPORTING

Page 69

1 Q. Okay. All right.
2 A. He said there ain't nothing you
3 can do to it until it's fixed. She
4 denied me. They wanted two more
5 doctors --

6 Q. I understand. Well, let's not
7 get to that yet. Okay. I understand.
8 Please -- all right. So, if Dr.
9 Howorth's records say, "Preoperative
10 range of motion and strengthening to
11 improve range of motion and become
12 familiar with post-operative exercise
13 program," in other words, that he had
14 referred you -- Dr. Howorth's records
15 indicate that he had referred you to
16 physical therapy.

17 A. After the surgery.

18 Q. You don't agree with that?

19 A. After the surgery.

20 Q. Okay. All right. And he told
21 you that you needed surgery, and he
22 wanted it done on that Monday?

23 A. Uh-huh (affirmative).

Page 70

1 Q. Is that yes?

2 A. Yes, he wanted it done --

3 Q. Okay. What else did he tell you
4 about the surgery?

5 A. He said it being so long -- he
6 said he could already tell there was
7 bursitis set up in it and it needed
8 surgery immediately. And before I get
9 back home, Victoria called and cancelled
10 it.

11 Q. Did he schedule the surgery?

12 A. Yeah. He told me to go on to
13 the hospital and get pre-oped and get
14 ready to go on in.

15 Q. And did you go?

16 A. No. That woman called me and
17 told me to call them. And as soon as I
18 called, she denied it. She said, "We got
19 two more doctors we want to look at them
20 MRI's before we let you do anything."

21 Q. Okay. And who was that,
22 Ms. Victoria?

23 A. Ms. Victoria.

Page 71

1 Q. Okay. And where were you when
2 that conversation occurred?

3 A. I was on my phone with her then.

4 Q. At your mother-in-law's?

5 A. Uh-huh (affirmative).

6 Q. That was the 863-6195?

7 A. 6195.

8 Q. Okay.

9 A. I called her every week. She
10 kept saying she needed another doctor to
11 look at it.

12 Q. All right. And you went back to
13 Dr. Howorth again on December the 8th;
14 right? Well, I'm sorry. Did you go back
15 to see him again before the surgery?

16 A. Huh-uh (negative). I had
17 surgery on the 29th of November.

18 Q. Okay. You're right. You're
19 absolutely right. But before -- between
20 October the 27th and the date of that
21 surgery, which was about a month --

22 A. About 63 days.

23 Q. From the injury?

Page 72

1 A. Yeah. From the time I got hurt
2 until the surgery was 63 days.

3 Q. Okay. But it was about a month
4 from the first time you saw Dr. Howorth
5 until the surgery?

6 A. Yeah, pretty close to it.

7 Q. All right. Did you go to any
8 other doctors during that month?

9 A. Huh-uh (negative).

10 Q. Is that no?

11 A. No, I didn't go to no other
12 doctors.

13 Q. Okay. And you talked to
14 Ms. Victoria you said every week?

15 A. I called her every week and
16 asked her would she hurry up and let me
17 have surgery because I was in pain.

18 Q. Okay. Do you -- do you know who
19 your -- did you call her, or would she
20 call you?

21 A. Oh, I'd call her.

22 Q. Okay. Do you know who your
23 mother-in-law uses for her phone service?

18 (Pages 69 to 72)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 73</p> <p>1 A. My mother-in-law? She's got 2 Roanoke Telephone. 3 MR. TINNEY: Roanoke Telephone 4 is the only telephone service we have 5 here. 6 THE WITNESS: Uh-huh. If she 7 couldn't get in touch with me, she'd 8 leave a message with my mother-in-law, 9 and my mother-in-law would come tell me, 10 and then I'd go call her. 11 Q. (By Mr. Brown) But you contend 12 that you talked to her and she said that 13 she wouldn't let you have surgery until 14 two other doctors looked at it? 15 A. Yeah. She said we want -- and 16 she said you need to get Howorth to send 17 me everything he's got, MRI's and 18 everything. We need two more doctors to 19 look at it. 20 Q. And did she say that she wanted 21 to send you to a different doctor, or 22 did -- 23 A. No. She just said she wanted</p> | <p style="text-align: right;">Page 75</p> <p>1 told me he'd take care of it and send her 2 what she had to have. And every time I'd 3 call her and ask her did she get what he 4 sent, she said, "No, he didn't send her 5 everything she needed." And I'd call him 6 back and ask him to please send her 7 whatever she needs. Call her and find 8 out what she needs and please send it to 9 her so I could get the surgery done. 10 Q. Okay. And what would his office 11 tell you? 12 A. He said, "We sent her everything 13 we've got." 14 Q. Okay. 15 A. She kept claiming they didn't. 16 Then she claimed one doctor looked at it, 17 but she hadn't had another doctor to look 18 at it. She wanted another doctor to look 19 at it. And it took 63 days before she 20 ever okayed it. 21 Q. Okay. Well, actually, it was 22 like 30 days because it's not 63 days. 23 It's 63 days from the day you injured it?</p> |
| <p style="text-align: right;">Page 74</p> <p>1 two more doctors to look at them. 2 Q. Did she tell you where those 3 doctor were going to be? 4 A. She didn't tell me where they 5 was at. She just said that I needed to 6 get in touch with Howorth and get him to 7 send her everything that he had on me so 8 she could get two more opinions. 9 Q. Okay. And did you talk to 10 Dr. Howorth and tell them to send 11 everything? 12 A. Yeah. And they kept claiming he 13 wasn't sending them the right stuff. So, 14 I had to call him back. Then I'd call 15 her back. They finally send -- you know, 16 finally sent her what she wanted because 17 she finally okayed it on the 29th. 18 Q. Okay. How many times did you 19 call -- did you ever go back to 20 Dr. Howorth's office and ask him, "Will 21 you please give me the records so I can 22 send them?" 23 A. No, I didn't. I just -- he just</p> | <p style="text-align: right;">Page 76</p> <p>1 A. From the time I got hurt, yeah. 2 Q. But about 31 days from the time 3 Dr. Howorth said, "I want to operate on 4 your shoulder"? 5 A. Yeah, uh-huh. 6 Q. Right? 7 A. Yeah. 8 Q. Okay. Okay. Do you know how 9 many times Ms. Heppes had to call 10 Dr. Howorth to ask them to please send 11 the appropriate -- 12 A. I don't really know how many 13 times she called. I called every week, 14 and she said they hadn't never sent her 15 what she needed. 16 Q. Okay. And after she would tell 17 you that, you would call Dr. Howorth? 18 A. Yeah. 19 Q. And Dr. Howorth would say, 20 "Well, we already sent everything"? 21 A. "We've sent everything we've 22 got." 23 Q. And then you would do what, call</p> |

19 (Pages 73 to 76)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 77</p> <p>1 her back.</p> <p>2 A. Call her back. And she'd say</p> <p>3 they still ain't got everything. I don't</p> <p>4 know why she kept doing it.</p> <p>5 Q. Okay. All right.</p> <p>6 A. All I know, I wasn't sleeping in</p> <p>7 the daytime, and I was up there working</p> <p>8 all night long in pain for a long time.</p> <p>9 Q. And you didn't have the</p> <p>10 opportunity to go and physically get</p> <p>11 records from Dr. Howorth and mail them</p> <p>12 yourself; right?</p> <p>13 A. Huh-uh (negative).</p> <p>14 Q. Is that no?</p> <p>15 A. No. Because his secretary told</p> <p>16 me -- said that she would try to send</p> <p>17 them everything she could.</p> <p>18 Q. Do you remember his secretary's</p> <p>19 name?</p> <p>20 A. Oh, no.</p> <p>21 Q. Was it Amy?</p> <p>22 A. Yeah, I think it was Amy.</p> <p>23 Q. Now, did you ever call</p> | <p style="text-align: right;">Page 79</p> <p>1 A. She said, "You're true on that</p> <p>2 too I guess." I said, "I'm not going to</p> <p>3 let them hurt my shoulder worser until</p> <p>4 they fix it." She said, "I understand."</p> <p>5 Q. Okay. So, you talked to her on</p> <p>6 the 27th and then the following week. I</p> <p>7 don't remember what the date of that week</p> <p>8 was. But the following week, you talked</p> <p>9 to her, and you had talked back and forth</p> <p>10 with her and Dr. Howorth; right?</p> <p>11 A. Uh-huh (affirmative).</p> <p>12 Q. Okay.</p> <p>13 A. He was wanting to do it, and she</p> <p>14 was prolonging it.</p> <p>15 Q. Why do you think she was</p> <p>16 prolonging it?</p> <p>17 A. I don't know. I couldn't figure</p> <p>18 it out.</p> <p>19 Q. Do you think that she was</p> <p>20 intentionally trying to hurt you?</p> <p>21 A. I told her I was in excruciating</p> <p>22 pain. I said, "Look. I've been this way</p> <p>23 for nearly 63 days." I said, "I need</p> |
| <p style="text-align: right;">Page 78</p> <p>1 Ms. Howorth -- not Ms. Howorth --</p> <p>2 Ms. Heppes on November the 8th, 2004, and</p> <p>3 tell her that you did not want to do any</p> <p>4 physical therapy until after surgery?</p> <p>5 A. Yes, I did. I told her that</p> <p>6 Dr. Howorth said you can't rehabilitate</p> <p>7 something that ain't been fixed. And she</p> <p>8 said, "We thought you could rehabilitate</p> <p>9 it first." I said, "You can't if it</p> <p>10 ain't been fixed."</p> <p>11 Q. Okay. So, how did you find out</p> <p>12 that you were being told to go to</p> <p>13 physical therapy before the surgery?</p> <p>14 A. She called -- she called my</p> <p>15 mother-in-law before I could even get</p> <p>16 back home. He done had me scheduled for</p> <p>17 surgery, and she called and cancelled it</p> <p>18 and wanted me to do therapy. And I</p> <p>19 called her back and told her there's no</p> <p>20 way I can therapy something that's tore</p> <p>21 up. She said, "Well, you're true about</p> <p>22 that too."</p> <p>23 Q. I didn't hear that part.</p> | <p style="text-align: right;">Page 80</p> <p>1 surgery." I said, "This is killing me."</p> <p>2 She said, "I understand. But we ain't</p> <p>3 got the right paperwork."</p> <p>4 Q. But do you think that she was</p> <p>5 intending to cause you any harm? You</p> <p>6 don't think she was doing that, do you?</p> <p>7 A. I tried to explain it to her. I</p> <p>8 said, "It's killing me. I don't sleep in</p> <p>9 the daytime, and I have to come up here</p> <p>10 at night because y'all don't want to pay</p> <p>11 me workman's comp." And I said, "I'm in</p> <p>12 excruciating pain."</p> <p>13 Q. But you don't think that she was</p> <p>14 doing anything intentionally, do you?</p> <p>15 MR. TINNEY: I'm going to object</p> <p>16 and really instruct him not to answer</p> <p>17 that because you're asking for a mental</p> <p>18 operation on the part of Victoria, and he</p> <p>19 would have no way to know what she was</p> <p>20 intending and not intending. That's the</p> <p>21 mental operation on her part.</p> <p>22 Q. (By Mr. Brown) Based on the</p> <p>23 conversations, did you formulate any of</p> |

20 (Pages 77 to 80)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 81</p> <p>1 your own opinions on what she meant or 2 what she intended? 3 A. I didn't know what she intended 4 to do. 5 Q. Okay. 6 MR. BROWN: Let's certify that 7 first question, please. 8 THE WITNESS: I was just begging 9 and pleading. 10 MR. TINNEY: You answered the 11 question, Steve. 12 Q. (By Mr. Brown) That's fine. 13 Are you critical of the 14 treatment that Dr. Shirah did for you? 15 A. No. He was just treating me for 16 what he thought it was. 17 Q. Okay. And you thought that it 18 was okay to go to Dr. Shirah before -- 19 A. That's who they told me to go 20 to, so I didn't, you know, have no 21 choice. 22 Q. Okay. Okay. All right. Now, 23 the next week was November the 1st</p> | <p style="text-align: right;">Page 83</p> <p>1 specific number of times that y'all 2 talked? 3 A. No, but it was several. 4 Q. Okay. Do you think it was more 5 or less than five? 6 A. Oh, it was more. 7 Q. Okay. Do you think it was more 8 or less than ten? 9 A. I imagine it was more. 10 Q. More than ten? 11 A. Yeah. 12 Q. Okay. 13 A. Because every week, I'd call her 14 and ask her when could they do it, when 15 can I get my surgery. 16 Q. And she was telling you as soon 17 as Dr. Howorth send us the stuff, and 18 then you were calling the doctor, and the 19 doctor said I sent it. And it seems like 20 there was just a lot of confusion? 21 A. A lot of confusion, and I was 22 the one suffering in pain. 23 Q. Okay. Something going on</p> |
| <p style="text-align: right;">Page 82</p> <p>1 through November the 5th. Those were the 2 business days. I was looking at a 3 calendar, so if you would trust me on 4 that. Did you talk to her between 5 November 1st and November 5th, 6 Ms. Victoria? 7 A. I can't remember whether I did 8 or not. 9 Q. Okay. 10 A. I talked to her lots. 11 Q. Okay. How about during the week 12 of November the 8th through November 13 12th, do you recall any conversations 14 with her? 15 A. I might have. I'm not sure. I 16 couldn't guarantee it. 17 Q. Okay. But you don't recall. 18 When you're describing to me your 19 conversations, you don't recall the 20 specific days? 21 A. No, I can't remember the 22 specific days. 23 Q. And you don't recall the</p> | <p style="text-align: right;">Page 84</p> <p>1 between the doctor's office and CMI? 2 A. Yeah. 3 Q. And that was the reason you 4 weren't getting your surgery? 5 A. That's right. 6 Q. Okay. And CMI was saying, "he 7 hasn't done what we asked him to do," and 8 he was saying, "I have done what they 9 asked me to do," and all that kind of 10 stuff; right? 11 A. Yeah. 12 Q. Do you know if Ms. Heppes had 13 any communication with Dr. Shirah or how 14 many times -- not Shirah -- Dr. Howorth's 15 office? 16 A. I'm pretty sure she called them 17 because she said she called them to make 18 sure she got what she needed sent to her. 19 Q. And do you have any kind of 20 evidence or know the specific number of 21 times or the days that those phone calls 22 occurred? 23 A. I couldn't tell you that.</p> |

21 (Pages 81 to 84)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 85</p> <p>1 Q. All right. And during all this 2 time, I think you said you were at home 3 during the day and couldn't sleep? 4 A. I couldn't sleep because I was 5 hurting. 6 Q. And you were still going to work 7 at night? 8 A. They was making me come up there 9 every night. I couldn't take my pain 10 medicine because it would make me so 11 sleepy and drowsy, so I was just stuck. 12 Q. Okay. Did you have 13 conversations with anybody other than 14 Ms. Heppes out at CMI about that surgery? 15 A. She was the only one. 16 Ms. Victoria took care of all that. 17 Q. And after Dr. Howorth told you 18 that he wanted to do surgery, and she was 19 telling you that they were waiting for, 20 you know, information and all that, did 21 you have any conversations with anybody 22 at the store about what was going on? 23 A. Yeah. I talked to Rhonda and</p> | <p style="text-align: right;">Page 87</p> <p>1 Q. Okay. Anybody else at the store 2 other than Ms. Rhonda? 3 A. As far as I know, nobody else 4 did. 5 Q. Do you remember talking to 6 Charlotte Woody about it? 7 A. Charlotte might have called her 8 some. 9 Q. But you don't know? 10 A. I don't know. 11 Q. How about Mr. Cheatwood? 12 A. Chris Cheatwood. 13 Q. Do you know if he ever called 14 for you? 15 A. No. He wasn't there very long. 16 He transferred. 17 Q. Okay. So, at the store, the 18 only people you would have had 19 communications with were Rhonda Walker 20 and Charlotte Woody? 21 A. Charlotte Woody. 22 Q. All right. And they were always 23 fine to you, weren't they?</p> |
| <p style="text-align: right;">Page 86</p> <p>1 some of the management and everything and 2 told them how I was displeased with it 3 because they wouldn't, you know, give me 4 my surgery. 5 Q. Okay. And what did they tell 6 you? 7 A. They said that it was out of 8 their hands, that workman's comp had to 9 take care of it. 10 Q. Okay. Rhonda, was that Rhonda 11 Walker? 12 A. Rhonda Walker. She even 13 called -- she even called her one time. 14 Q. She called CMI? 15 A. Called Victoria one time. 16 Q. Were you there when she called 17 them? 18 A. No. She told me she'd call her 19 to find out what the problem was. 20 Q. Did she ever tell you what the 21 problem was or what she had found out? 22 A. She just said they didn't have 23 the right paperwork.</p> | <p style="text-align: right;">Page 88</p> <p>1 A. Yeah. 2 Q. Okay. And Ms. Heppes -- you 3 know, you talk about conversations with 4 her. Was she ever mean to you or rude? 5 A. She got kind of rude on the 6 phone a couple of times. 7 Q. Okay. Did she ever tell you 8 things like, you know, leave me alone or 9 stuff like that? 10 A. No. She just said we're trying 11 to do it as fast as we can. I said, "But 12 you're killing me in same process." 13 Q. Okay. So, was -- did you think 14 that maybe she was just frustrated that 15 she -- 16 A. I don't know. 17 Q. Okay. That's fine. 18 A. I don't know. 19 Q. And the only person that you can 20 remember talking to at Dr. Howorth's 21 office was Amy? 22 A. Secretary. 23 Q. You think it was Amy?</p> |

22 (Pages 85 to 88)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 89</p> <p>1 A. Yeah, I think her name was Amy.</p> <p>2 Q. Did they say anything about what</p> <p>3 was taking CMI so long? Did they tell</p> <p>4 you anything?</p> <p>5 A. They couldn't tell me. They</p> <p>6 said they didn't know why they was</p> <p>7 holding up. They said, "Dr. Howorth</p> <p>8 wants you in surgery, and we don't know</p> <p>9 what the hold up is on it."</p> <p>10 Q. Okay. And how many times did</p> <p>11 Ms. Heppes tell you that she wanted to</p> <p>12 have another opinion?</p> <p>13 A. I called her about at least once</p> <p>14 a week, and she said that she needed two</p> <p>15 more doctors to look at it. I said, "You</p> <p>16 done got Dr. Shirah and Dr. Howorth." I</p> <p>17 said, "Who else do you need?" You know,</p> <p>18 she said they had two more company</p> <p>19 doctors that they wanted to look at it.</p> <p>20 Q. Did she tell you who the company</p> <p>21 doctors was?</p> <p>22 A. She didn't tell me who no doctor</p> <p>23 was.</p> | <p style="text-align: right;">Page 91</p> <p>1 kind of a request or an authorization</p> <p>2 from the doctor before they could</p> <p>3 schedule the surgery?</p> <p>4 A. I don't know. I don't really</p> <p>5 know what the problem was. She just kept</p> <p>6 saying they didn't have the right</p> <p>7 paperwork and they needed the MRI.</p> <p>8 Q. And you assumed that Dr. Howorth</p> <p>9 sent the paperwork?</p> <p>10 A. Yeah. He told me. I called his</p> <p>11 office. He said, "We sent them</p> <p>12 everything we've got."</p> <p>13 Q. Now, when did you find out --</p> <p>14 what day was it that you found out that</p> <p>15 the surgery had actually been approved?</p> <p>16 A. They called me on a -- I think</p> <p>17 it was Wednesday and told me they wanted</p> <p>18 me in there on that Monday, I think.</p> <p>19 Q. And on the day they called you,</p> <p>20 they called you at home; right?</p> <p>21 A. Uh-huh (affirmative).</p> <p>22 Q. And was that Ms. Victoria?</p> <p>23 A. Victoria, she had already</p> |
| <p style="text-align: right;">Page 90</p> <p>1 Q. And she didn't tell you if she</p> <p>2 wanted you to go be seen by somebody</p> <p>3 else?</p> <p>4 A. Nobody besides Howorth.</p> <p>5 Q. So, do you know whether she just</p> <p>6 wanted to have the records reviewed by</p> <p>7 somebody?</p> <p>8 A. She just kept saying she didn't</p> <p>9 have the proper paperwork.</p> <p>10 Q. Okay.</p> <p>11 A. Kept putting it off.</p> <p>12 Q. Do you know when Dr. Howorth</p> <p>13 finally -- strike that.</p> <p>14 Do you know when Dr. Howorth</p> <p>15 actually sent the surgery requests to</p> <p>16 CMI?</p> <p>17 A. I don't know exactly when he</p> <p>18 sent it. It had to be from the first</p> <p>19 time I seen him until within 30 -- it was</p> <p>20 about 30 days after that before I had</p> <p>21 surgery.</p> <p>22 Q. Okay. And was it your</p> <p>23 understanding that they had to have some</p> | <p style="text-align: right;">Page 92</p> <p>1 approved it. She finally approved it.</p> <p>2 Q. And did she tell you that they</p> <p>3 had finally gotten the paperwork from the</p> <p>4 doctor?</p> <p>5 A. Finally.</p> <p>6 Q. Okay. And so they approved it?</p> <p>7 A. Then I had to go down on Friday</p> <p>8 and get preadmitted and then go back</p> <p>9 Monday for surgery.</p> <p>10 Q. All right. And that was at</p> <p>11 Russell Hospital?</p> <p>12 A. Russell Hospital.</p> <p>13 Q. Okay.</p> <p>14 A. Alex City.</p> <p>15 Q. So, you recall that she called</p> <p>16 you one day, you went to the hospital the</p> <p>17 next day to get preregistered or fill out</p> <p>18 some paperwork?</p> <p>19 A. Yeah. Because they called me</p> <p>20 and told me to get all my --</p> <p>21 preregistered and everything on Friday</p> <p>22 and be ready to have surgery on Monday.</p> <p>23 Q. And then you had the surgery on</p> |

23 (Pages 89 to 92)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 93</p> <p>1 Monday?</p> <p>2 A. On the 29th.</p> <p>3 Q. So, if the records from Russell</p> <p>4 Hospital show that you went in there on</p> <p>5 the 26th, you don't have any reason to</p> <p>6 doubt that, do you?</p> <p>7 A. No. I just went down there and</p> <p>8 got preadmitted on a Friday. And then</p> <p>9 there was Saturday and Sunday in between,</p> <p>10 and then I had surgery on Monday.</p> <p>11 Q. Is that your signature there?</p> <p>12 A. Yes, it looks like my signature.</p> <p>13 Q. Okay. This is just a</p> <p>14 preadmission sheet from Russell Hospital.</p> <p>15 And was the surgery inpatient?</p> <p>16 Did you have to spend the night in the</p> <p>17 hospital?</p> <p>18 A. Oh, they had me out of there</p> <p>19 that evening.</p> <p>20 Q. Okay.</p> <p>21 A. I was still -- I was still under</p> <p>22 the influence of stuff. I didn't even</p> <p>23 know where I was at. My son had to tote</p> | <p style="text-align: right;">Page 95</p> <p>1 needed to be preadmitted on that Friday</p> <p>2 and he wanted surgery on that Monday</p> <p>3 morning. Then I think -- I think that's</p> <p>4 the way it happened. So, I had to make</p> <p>5 two trips down there Friday and then go</p> <p>6 back and be admitted on Monday.</p> <p>7 Q. How long does it take to get</p> <p>8 from your house to Alexander City?</p> <p>9 A. It's about -- I had to keep up</p> <p>10 with my mileage. It was 46 miles down</p> <p>11 there and 46 miles back.</p> <p>12 Q. Now, the surgery was paid for by</p> <p>13 comp?</p> <p>14 A. Yeah.</p> <p>15 Q. You never got a bill?</p> <p>16 A. Oh, yeah, I got several bills.</p> <p>17 Q. But you sent it --</p> <p>18 A. I took it to Wal-Mart, and they</p> <p>19 took care of it. They sent them to me,</p> <p>20 though. But I took it to Wal-Mart, and</p> <p>21 they eventually paid it.</p> <p>22 Q. Nobody ever brought suit?</p> <p>23 A. They sent me one for the</p> |
| <p style="text-align: right;">Page 94</p> <p>1 me to the car. They wanted me out of</p> <p>2 there as quick as possible.</p> <p>3 Q. Did they get you in real early?</p> <p>4 A. Yeah. I was in there, I think,</p> <p>5 around 9:00 or 10:00. They had me out of</p> <p>6 there by 3:00 o'clock. I don't even</p> <p>7 remember leaving there. I had to stop</p> <p>8 and throw up on the side of the road.</p> <p>9 Q. That stuff was making you --</p> <p>10 A. Yeah. The anesthesiologist even</p> <p>11 had to walk --</p> <p>12 Q. -- making you nauseated?</p> <p>13 A. Yeah. My son had to tote me to</p> <p>14 the car. They didn't want me in there no</p> <p>15 longer than what they had to.</p> <p>16 Q. Okay. And did Ms. Heppes --</p> <p>17 Ms. Victoria, did she call you at home</p> <p>18 and tell you that the surgery was being</p> <p>19 scheduled?</p> <p>20 A. I can't even remember if she</p> <p>21 called me or Dr. Howorth called me. One</p> <p>22 of -- I can't remember which one called</p> <p>23 me. I think Amy called me and told me I</p> | <p style="text-align: right;">Page 96</p> <p>1 anesthesiologist. I had to call them</p> <p>2 about that. And I had to call</p> <p>3 Ms. Victoria, and she said she'd take</p> <p>4 care of it. It took them a while before</p> <p>5 they paid that. They sent me another</p> <p>6 bill.</p> <p>7 Q. But it -- you didn't get sued by</p> <p>8 anybody?</p> <p>9 A. No. Eventually, they paid them.</p> <p>10 Q. Okay. Now, you talked to</p> <p>11 Ms. Victoria on the day after your</p> <p>12 surgery; right? Do you remember that?</p> <p>13 A. I can't remember if I did or</p> <p>14 not. It would have had to have been on</p> <p>15 the 30th of the month. Well, I got</p> <p>16 surgery on the 29th. It was on a Monday.</p> <p>17 I might have did. I'm not for sure it's</p> <p>18 been so long.</p> <p>19 Q. Okay. But you told them that</p> <p>20 you had had the surgery?</p> <p>21 A. Yeah.</p> <p>22 Q. Do you remember a phone call,</p> <p>23 though, where somebody called and said,</p> |

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 97</p> <p>1 "Okay. You were scheduled for surgery. 2 Did you actually get it done?" 3 A. Yeah. 4 Q. Okay. 5 A. And the next question was, "When 6 are you starting therapy?" I said, "the 7 next week." 8 Q. Okay. And the doctor wanted you 9 to stay out of work for about two months? 10 A. I was out a week. 11 Q. A week? 12 A. Yeah. I was out a week, and 13 they made me go back. 14 Q. Who is "they"? 15 A. The doctor told me I could go 16 back just as long as I kept my arm in a 17 sling and didn't use it. 18 Q. Okay. And that was -- 19 A. Howorth. 20 Q. And that was on December the 8th 21 when you went back to Dr. Howorth; right? 22 A. Uh-huh (affirmative). 23 Q. Okay. Now, before you went to</p> | <p style="text-align: right;">Page 99</p> <p>1 Q. But how did you know to go to 2 the -- is it Lake Martin Physical 3 Therapy? 4 A. He's in the same building with 5 Dr. Howorth right across the hall. 6 Q. Okay. And that's -- 7 A. Dr. Mark Staples, I think. 8 Q. All right. And on the date of 9 your first visit to physical therapy, you 10 said the pain was a five on a scale of 11 one to ten; is that right? 12 A. Oh, it was hurting. 13 Q. And you went back to Dr. Howorth 14 on December the 8th, and that's when he 15 told you that you could go back to work 16 on light duty? 17 A. Yeah. 18 Q. Going back to being a -- 19 A. So, I was staying up all night 20 and going to Alex City twice a week doing 21 physical therapy. 22 Q. Okay. Did you ask the doctor to 23 keep you out of work longer?</p> |
| <p style="text-align: right;">Page 98</p> <p>1 Dr. Howorth, you actually went to your 2 first physical therapy appointment on 3 like the day after or two days after the 4 surgery, didn't you? 5 A. Yeah. I had surgery on Monday, 6 and I started therapy, I think, on 7 Wednesday. I went Wednesday and Friday. 8 Q. All right. 9 A. They wanted me to start therapy 10 just as quick as possible. 11 Q. Okay. And were you wearing one 12 of those funny slings too? 13 A. Yeah. 14 Q. Did anybody -- did Ms. Victoria 15 ever call you and tell you to go to 16 physical therapy? How did you find out 17 you needed to go to physical therapy? 18 A. Dr. Howorth told me after I had 19 surgery that he wanted me to start 20 therapy the next following Wednesday, I 21 think. I had surgery on Monday. He 22 wanted me in physical therapy by 23 Wednesday, two days later.</p> | <p style="text-align: right;">Page 100</p> <p>1 A. No. He just told me to go back 2 just as long as I didn't use that one 3 arm. Just as long as I don't hurt that 4 arm whatsoever. 5 Q. All right. All right. After 6 that visit on December the 8th, you were 7 still going to physical therapy? 8 A. Yeah. I would try to -- if I 9 had to see him, I would try to schedule 10 it while I was already down there. 11 Q. Okay. And he wanted you to 12 continue with your physical therapy? 13 A. Yeah. I done it for two and a 14 half months. 15 Q. And you went to physical therapy 16 on the 8th, and then you went on the 9th; 17 isn't that right? Again, did you go two 18 days back to back? Do you remember? 19 A. Seems like I did when I first 20 started. And then I scheduled it for, 21 you know, to skip a day in between 22 because I had to work every night. I 23 couldn't go every day. So, I had to do</p> |

25 (Pages 97 to 100)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 101</p> <p>1 it on Wednesday and maybe go again on 2 Friday. 3 Q. All right. Then on December -- 4 I'm sorry. I think it was December the 5 10th that says you went back the second 6 or the third time to physical therapy. 7 Does that sound about right? 8 A. I went the whole month of 9 December and January and half of 10 February. 11 Q. And was physical therapy helping 12 you at all? 13 A. Oh, man, it was hurting me. It 14 was killing me. 15 Q. But was it helping you with pain 16 at home? 17 A. When I'd leave out from down 18 there, I'd be hurting so bad, I couldn't 19 even sleep. I told Dr. Howorth it was 20 hurting me worse than it was helping me. 21 So, he finally stopped it after two and a 22 half months. 23 Q. And would the pain get any</p> | <p style="text-align: right;">Page 103</p> <p>1 exactly what day it was. 2 Q. And the time that you were off, 3 that's when you got that second check for 4 \$60 or whatever it was? 5 A. Yeah. That's when I had the 6 surgery. They sent me a check for \$60. 7 I laughed. 8 Q. Went back to Dr. Howorth again 9 on December the 29th. Does that sound 10 right? 11 A. I went to how many times, I 12 don't know exactly how many times I did 13 go. I went to him at least once a week 14 or once every two weeks in between 15 therapy. 16 Q. But if you visited with him on 17 the -- 18 A. I can't remember exact dates. 19 Q. Well, if you visited with him on 20 the 8th, and he says come back in three 21 weeks for an assessment, you would make 22 your appointment before you left the 23 office; right?</p> |
| <p style="text-align: right;">Page 102</p> <p>1 better? 2 A. Because they x-rayed it. He 3 said one of my screws had moved and was 4 scrubbing my shoulder bone. 5 Q. And did he tell you why one of 6 the screws had moved? 7 A. He said the only thing he could 8 do is he might have to go back in and 9 rescope it or give me Cortisone. That 10 was all he could do. 11 Q. Okay. You hadn't had another 12 surgery, have you? 13 A. Huh-uh, not besides the leg and 14 the heart. 15 Q. I understand. But nothing else 16 on your shoulder? 17 A. Huh-uh (negative). 18 Q. Do you remember the first day 19 you went back to work? Was it like 20 December the 12th? 21 A. I can't remember exactly. I had 22 surgery on the 29th, and he told me to 23 take off a week. I can't remember</p> | <p style="text-align: right;">Page 104</p> <p>1 A. Yeah. 2 Q. So, you'd leave the office with 3 a little appointment card? 4 A. Yeah. 5 Q. Okay. So, then, if you went 6 back on December the 29th, that said 7 "follow up for your rotator cuff, wounds 8 are clean." Continue -- he put you on 9 Celebrex at that time for -- 10 A. Yeah. 11 Q. -- discomfort? 12 A. Uh-huh (affirmative). 13 Q. Kept on going to physical 14 therapy? 15 A. Kept on going to physical 16 therapy. 17 Q. If he told you to come back in 18 three weeks, would you have made your 19 appointment before you left the office? 20 A. Yeah, I always did. 21 Q. Between the two visits on the 22 8th and the 29th during that 21-day 23 period, do you remember if you had any</p> |

26 (Pages 101 to 104)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 105</p> <p>1 conversations with Ms. Victoria?</p> <p>2 A. After I got surgery, I didn't</p> <p>3 hardly ever call her back anymore. Until</p> <p>4 I got surgery, I was calling her every</p> <p>5 week, begging her to get me surgery.</p> <p>6 Q. But then after the surgery, you</p> <p>7 were going to therapy, and you were going</p> <p>8 to the doctor?</p> <p>9 A. Yeah, I was going to the doctor</p> <p>10 and therapy twice a week.</p> <p>11 Q. Okay. And then going to work</p> <p>12 every night?</p> <p>13 A. Going to work every night.</p> <p>14 Q. And do you know how many more</p> <p>15 conversations you had with her after</p> <p>16 that?</p> <p>17 A. It wasn't many.</p> <p>18 Q. Okay. And did you have any</p> <p>19 conversations with her after the surgery</p> <p>20 that were not good conversations? Did</p> <p>21 y'all --</p> <p>22 A. We had one. I was in the office</p> <p>23 at Wal-Mart. And we had one because I</p> | <p style="text-align: right;">Page 107</p> <p>1 medicine. I done got in bad shape.</p> <p>2 Q. So, did you go see Dr. Caypleess?</p> <p>3 That's at Woodland; is that right?</p> <p>4 A. Woodland, uh-huh.</p> <p>5 Q. Did you go to him and get on</p> <p>6 that medication before you had the</p> <p>7 shoulder surgery?</p> <p>8 A. No. I wasn't on any kind of</p> <p>9 medication until I had surgery. After I</p> <p>10 had surgery, that's when I had to start</p> <p>11 medication.</p> <p>12 Q. Okay. But you had the</p> <p>13 conversation where your blood pressure</p> <p>14 shot up high before the surgery?</p> <p>15 A. Yeah. When I was getting</p> <p>16 preadmitting, that woman -- she done a</p> <p>17 heart thing on me down there because she</p> <p>18 was worried I was going to have a stroke</p> <p>19 because it was running 150 over 100. She</p> <p>20 didn't even want me to leave the hospital</p> <p>21 that day. She said, "You need to get in</p> <p>22 here Monday and get this done."</p> <p>23 Q. That was at Russell Hospital?</p> |
| <p style="text-align: right;">Page 106</p> <p>1 told her how bad I was in pain. I said,</p> <p>2 "Y'all are killing me."</p> <p>3 Q. That's after the surgery?</p> <p>4 A. That's before the surgery.</p> <p>5 Q. Okay. I was talking -- I'm</p> <p>6 sorry.</p> <p>7 A. We didn't have any trouble after</p> <p>8 I got the surgery, you know.</p> <p>9 Q. You didn't have any problems</p> <p>10 with her after the surgery?</p> <p>11 A. Huh-uh (negative).</p> <p>12 Q. When you had the conversation</p> <p>13 with her at the store, was there anybody</p> <p>14 else in the room?</p> <p>15 A. Rhonda Walker was sitting in</p> <p>16 there because she thought I was fixing to</p> <p>17 pass out my blood pressure had done shot</p> <p>18 up so high.</p> <p>19 Q. Did you go to the doctor?</p> <p>20 A. Yeah. That's when -- I had done</p> <p>21 made my appointment with Dr. Bill</p> <p>22 Caypleess. That's the reason they had to</p> <p>23 put me on blood pressure and cholesterol</p> | <p style="text-align: right;">Page 108</p> <p>1 A. Uh-huh (affirmative). She</p> <p>2 didn't even want to let me go home. She</p> <p>3 was scared I was going to have a stroke.</p> <p>4 Q. Did you tell her you were okay?</p> <p>5 A. She made me lay down and done</p> <p>6 some kind of test on me. She said, "You</p> <p>7 need to get to your regular doctor and</p> <p>8 get you some blood pressure medicine</p> <p>9 now."</p> <p>10 Q. And you didn't get on blood</p> <p>11 pressure medicine until after the</p> <p>12 surgery?</p> <p>13 A. After the surgery, I had to go</p> <p>14 on blood pressure and cholesterol</p> <p>15 medicine too. Both of them was out of</p> <p>16 sight.</p> <p>17 Q. Did they tell you what your</p> <p>18 cholesterol was?</p> <p>19 A. He told me, but I couldn't tell</p> <p>20 you. Bill Caypleess could tell you.</p> <p>21 Q. But that's just from heredity</p> <p>22 and --</p> <p>23 A. Yeah.</p> |

27 (Pages 105 to 108)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 109</p> <p>1 Q. -- maybe eating too much fried 2 food? 3 A. He just told me that me being in 4 pain for so long is the reason it went up 5 like that. He said, "You're probably 6 going to have it the rest of your life." 7 Q. Okay. So, Dr. Cayple told 8 you -- 9 A. Told me that -- 10 Q. -- that pain made your -- 11 A. -- pain can make your blood 12 pressure shoot up. 13 Q. I understand blood pressure. I 14 was asking did he say that the pain made 15 your cholesterol go up? 16 A. That's what he said. He said 17 between all the pain I went through, my 18 cholesterol was out of sight, and my 19 blood pressure was out of sight too. I 20 check it pretty regular. It runs high 21 every day. 22 Q. Has the doctor told you that you 23 need to quit smoking?</p> | <p style="text-align: right;">Page 111</p> <p>1 you remember any conversations with 2 anybody at CMI, Ms. Victoria or anything 3 like that? 4 A. Not offhand. 5 Q. Okay. Do you remember if you 6 had talked to anybody at the store about 7 your shoulder? 8 A. No. Everybody just asked me how 9 I was doing. 10 Q. Okay. But that was just saying 11 "Are you feeling better"? 12 A. Yeah. Just asked me how I was 13 doing basically. 14 Q. And when you saw Dr. Howorth on 15 the 19th, he said that he felt like your 16 range of motion at that time was pretty 17 good and that you had 80 percent range of 18 motion. Did y'all discuss that? 19 A. I don't remember that. 20 Q. Okay. 21 A. He just told me that if he could 22 have lasered it back, it would have been 23 better. Since he couldn't laser it and</p> |
| <p style="text-align: right;">Page 110</p> <p>1 A. Oh. They're all going to tell 2 you that. 3 Q. Bear with me a minute, please. 4 When you went the day to take -- 5 to get your surgery done on the 29th, did 6 they give you anything for your blood 7 pressure? 8 A. Huh-uh (negative). It was high 9 that day too. 10 Q. All right. We had last talked 11 about your December 29th visit with 12 Dr. Howorth; right? 13 A. Uh-huh (affirmative). 14 Q. Okay. And after that visit, 15 your next visit was about three weeks or 16 January 19th up there at the top. You 17 don't disagree with that? 18 A. I can't remember. 19 Q. Up there at the top. 20 A. I went to him the whole month of 21 December and January and February 22 before -- 23 Q. Well, between the two visits, do</p> | <p style="text-align: right;">Page 112</p> <p>1 had to put pins in it, he said, it 2 wouldn't never be right. 3 Q. Why couldn't he laser it back? 4 A. Because it was tore so -- it 5 done sagged -- it had pulled and 6 stretched so far from taking so long 7 about getting it done, that he had to 8 pull them up and put pins in them besides 9 lasering it. 10 Q. And when did he tell you that? 11 A. The day when I come out of 12 surgery, he said, "I had to put pins in 13 them. I couldn't do, you know, the laser 14 because it was stretched too bad." 15 Q. And he said it was stretched too 16 bad -- 17 A. Yeah. 18 Q. -- because you had waited so 19 long to have the surgery? 20 A. Because I had waited so long to 21 get surgery. 22 Q. Okay. We're talking over each 23 other.</p> |

28 (Pages 109 to 112)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 113</p> <p>1 A. Yeah.</p> <p>2 Q. Let me finish my question, and</p> <p>3 I'll let you finish your answer.</p> <p>4 And that was the day you were at</p> <p>5 the hospital before you left to come</p> <p>6 home?</p> <p>7 A. Yeah.</p> <p>8 Q. And did he tell you that your</p> <p>9 outcome would have been better --</p> <p>10 A. Oh, yes.</p> <p>11 Q. -- if you had had surgery --</p> <p>12 A. Earlier.</p> <p>13 Q. Okay. When did he tell that you</p> <p>14 should have had surgery by?</p> <p>15 A. He wanted me to do it on</p> <p>16 November the 1st. That was on that</p> <p>17 Wednesday when I seen him. He wanted me</p> <p>18 in there on that Monday, and they denied</p> <p>19 it.</p> <p>20 Q. Did he tell you --</p> <p>21 A. 28 more days.</p> <p>22 Q. Did he tell you that if you had</p> <p>23 had surgery on the 1st, that he would</p> | <p style="text-align: right;">Page 115</p> <p>1 Q. And is that the only time he</p> <p>2 told you --</p> <p>3 A. And then when I start back going</p> <p>4 to him, they'd x-ray every time to see if</p> <p>5 the screws and everything -- but one of</p> <p>6 them had moved, and it was scraping my</p> <p>7 bone.</p> <p>8 Q. And he told you that this screw</p> <p>9 had moved because --</p> <p>10 A. Yeah, one of them had moved.</p> <p>11 Q. He told you that it had moved</p> <p>12 because of physical therapy?</p> <p>13 A. I guess. That's the only thing</p> <p>14 I could figure out that made it move.</p> <p>15 Q. But he didn't tell you what made</p> <p>16 it move?</p> <p>17 A. No. He just said one of them</p> <p>18 had -- he x-rayed it. And he just said</p> <p>19 one of them looked like it had shifted</p> <p>20 and was scraping my bone in there. He</p> <p>21 said, "All I can do is give you</p> <p>22 Cortisone."</p> <p>23 Q. Okay. After you saw Dr. Howorth</p> |
| <p style="text-align: right;">Page 114</p> <p>1 have been able to fix it with a laser?</p> <p>2 A. Yeah.</p> <p>3 Q. Between November the 1st and the</p> <p>4 day you had the surgery, did you do</p> <p>5 anything with your shoulder other than</p> <p>6 keep it in a sling?</p> <p>7 A. Kept it in a sling, that's it.</p> <p>8 Q. Did you try to move it at all?</p> <p>9 A. I couldn't it was hurting so</p> <p>10 bad.</p> <p>11 Q. You use it at work?</p> <p>12 A. Huh-uh (negative).</p> <p>13 Q. So, you walked around in a</p> <p>14 sling?</p> <p>15 A. In a sling, just using one hand.</p> <p>16 Q. How many times did he tell you</p> <p>17 that the surgical outcome would have been</p> <p>18 better if you would have had the surgery</p> <p>19 earlier? Did he ever tell you that --</p> <p>20 A. That day when I left the</p> <p>21 hospital. He said if he'd done it</p> <p>22 earlier, he could have fixed it a lot</p> <p>23 easier.</p> | <p style="text-align: right;">Page 116</p> <p>1 on the 19th -- and his note indicated</p> <p>2 that you were doing okay with physical</p> <p>3 therapy. Did you feel like the physical</p> <p>4 therapy was doing you --</p> <p>5 A. I kept telling him it was</p> <p>6 hurting me every time I was doing it.</p> <p>7 Q. Did you think it was improving</p> <p>8 you, though?</p> <p>9 A. Huh-uh, it was popping. It was</p> <p>10 hurting. I was hurting worsen when I</p> <p>11 left there than I was when I went in.</p> <p>12 Q. Okay. Did you ever tell anybody</p> <p>13 that you --</p> <p>14 A. I told Mark, the one that was</p> <p>15 doing the therapy. He went over there</p> <p>16 and talked to Howorth and told him it was</p> <p>17 just popping and cracking, popping and</p> <p>18 cracking.</p> <p>19 Q. Okay. Did you ever tell anybody</p> <p>20 that you felt like physical therapy was</p> <p>21 helping you?</p> <p>22 A. It wasn't. It was hurting.</p> <p>23 Q. All right. I understand. I</p> |

29 (Pages 113 to 116)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 117</p> <p>1 understand, but I'm not sure that I'm</p> <p>2 understanding the answer to my question.</p> <p>3 Did you ever tell anybody, Dr. Howorth or</p> <p>4 Ms. Victoria or anybody --</p> <p>5 A. I told Dr. Howorth that it was</p> <p>6 hurting worse than it was doing any good.</p> <p>7 Q. Okay. Did you ever tell</p> <p>8 Dr. Howorth that physical therapy was</p> <p>9 helping?</p> <p>10 A. No, I never did tell him it was</p> <p>11 helping me.</p> <p>12 Q. Okay. Did you ever tell</p> <p>13 Ms. Victoria that physical therapy was</p> <p>14 helping?</p> <p>15 A. No. She just asked me was I</p> <p>16 doing it, and I told her, "Yeah, I was</p> <p>17 trying to do the best I could with it."</p> <p>18 Q. Okay. So, it's your testimony</p> <p>19 that physical therapy never was helpful</p> <p>20 to you?</p> <p>21 A. Huh-uh. It was hurting me worse</p> <p>22 than it did anything else. I don't know</p> <p>23 whether it was the screws in it or what,</p> | <p style="text-align: right;">Page 119</p> <p>1 pain was reduced because of physical</p> <p>2 therapy and since your previous visits?</p> <p>3 A. I don't understand what you're</p> <p>4 saying here.</p> <p>5 Q. Did you ever tell Dr. Howorth</p> <p>6 that physical therapy was making the pain</p> <p>7 less?</p> <p>8 A. No. I told him it was making it</p> <p>9 worse.</p> <p>10 Q. Okay. And he was keeping you on</p> <p>11 light duty --</p> <p>12 A. Yeah.</p> <p>13 Q. -- at work?</p> <p>14 A. I was still using one arm. I</p> <p>15 couldn't pick up nothing with this one</p> <p>16 (indicating).</p> <p>17 Q. Now, were you taking pain</p> <p>18 medication the whole time?</p> <p>19 A. Well, what Dr. Shirah give me.</p> <p>20 And then he was giving me some. I think</p> <p>21 it was Darvocet.</p> <p>22 Q. "He" being Dr. Howorth?</p> <p>23 A. Howorth. After I had surgery,</p> |
| <p style="text-align: right;">Page 118</p> <p>1 but it was hurting.</p> <p>2 Q. And Dr. Howorth kept you going</p> <p>3 to physical therapy?</p> <p>4 A. For two and a half months.</p> <p>5 Q. Okay. Did you ever ask</p> <p>6 Ms. Victoria to make them stop physical</p> <p>7 therapy?</p> <p>8 A. No. I just asked him, and he</p> <p>9 stopped it. He called over and told Mark</p> <p>10 if it's hurting him worse than it's doing</p> <p>11 him any good, we'll just stop it.</p> <p>12 Q. Okay. All right. After January</p> <p>13 the 19th, you went back and saw</p> <p>14 Dr. Howorth on February the 8th. Do you</p> <p>15 have any recollection of those specific</p> <p>16 visits?</p> <p>17 A. Nothing besides he'd x-ray it</p> <p>18 every time I'd go. And that's about it.</p> <p>19 He just x-rayed it.</p> <p>20 Q. Did you ever tell him that you</p> <p>21 were only having a little bit of pain?</p> <p>22 A. No.</p> <p>23 Q. Did you ever tell him that the</p> | <p style="text-align: right;">Page 120</p> <p>1 he give me Darvocet for a while there.</p> <p>2 Q. Okay. And after you -- do you</p> <p>3 remember how many pills he gave you or</p> <p>4 tablets?</p> <p>5 A. About 20 at a time, I think. It</p> <p>6 wasn't many.</p> <p>7 Q. Did you get several</p> <p>8 prescriptions?</p> <p>9 A. Oh, yeah.</p> <p>10 Q. Where did you have your</p> <p>11 prescriptions filled?</p> <p>12 A. Wal-Mart. They paid for it.</p> <p>13 Q. Okay.</p> <p>14 A. As long as I was in therapy, I</p> <p>15 had to have something for pain.</p> <p>16 Q. Was there ever a period of</p> <p>17 time -- well, let me ask it this way:</p> <p>18 So, while you were actually going to</p> <p>19 physical therapy, did you take pain</p> <p>20 medication continuously?</p> <p>21 A. I had to try to take it where I</p> <p>22 could get some sleep to go to work.</p> <p>23 That's the only way I could do it.</p> |

30 (Pages 117 to 120)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 121</p> <p>1 Q. During the time that you were 2 going to physical therapy, was there ever 3 a time period of weeks, days, where you 4 didn't take pain medication? 5 A. I took one every day. That's 6 the only way I could get a little bit of 7 sleep where I could work. I had to. 8 Q. Do you remember what he was 9 giving you for the pain? 10 A. Well, one time it was Lortab. 11 And then he changed it to Darvocet. You 12 know, because Lortab wasn't doing too 13 good, so he said, "Well, I'll give you 14 Darvocet." And then one time, he give me 15 something else. I can't remember what 16 the name was. He give me another 17 different kind one time. 18 Q. And while you were going to 19 Dr. Howorth and working light duty, 20 that's when you started having all the 21 problems with your legs, and that's when 22 you went to your other doctor? 23 A. Other doctor.</p> | <p style="text-align: right;">Page 123</p> <p>1 Q. And you had two surgeries in 2 March, one to your heart and one to your 3 leg? 4 A. Yeah. 5 Q. Ten days apart? 6 A. One, I think, was on the 4th. I 7 think the other was on the 14th, I think. 8 Q. Were you having -- tell me how 9 your shoulder was hurting you after the 10 fact. 11 A. After I had the surgery? 12 Q. Yes, sir. 13 A. It was just excruciating pain. 14 It feels like something scrubbing in 15 there all the time. And there's a 16 certain way I can move it, and it just 17 pops. It will just pop. And I can't 18 raise it up. 19 Q. And physical therapy was making 20 it worse and never did help it? 21 A. No, it wasn't helping at all. 22 Mark said he hadn't never seen anybody 23 like that. It was just popping and</p> |
| <p style="text-align: right;">Page 122</p> <p>1 Q. All right. Now, that wasn't 2 covered by comp, was it? 3 A. Huh-uh, my wife had to pay that 4 with her insurance. 5 Q. Okay. And you're fine with 6 that, right, because that's not -- you 7 don't think that's related to your 8 shoulder injury, do you? 9 A. No. He just couldn't find no 10 circulation in my legs. 11 Q. And it was in about March that 12 you decided -- that he told you that you 13 could stop physical therapy; is that 14 right? 15 A. Yeah. After I went and had the 16 stint and artery and everything put in, 17 he told me to just go ahead and just stop 18 the therapy. 19 Q. Did he tell you that he wanted 20 to start it back up sometime later on? 21 A. No, he never did say. He said 22 we'll just stop it because I told him it 23 was hurting me worse than it was helping.</p> | <p style="text-align: right;">Page 124</p> <p>1 cracking every time he tried to move it. 2 It was just popping, cracking, popping, 3 cracking. I'd nearly jump off the bed 4 sometimes it was hurting so bad. 5 Q. You did -- you wanted to jump 6 off? 7 A. Yeah. It was hurting so bad 8 sometimes, I nearly about jumped off the 9 bed. 10 Q. Okay. Oh. I would hurt so 11 bad -- 12 A. Yeah. 13 Q. -- it would make you almost 14 jump -- 15 A. Yeah. 16 Q. I thought you were talking about 17 wanting to jump off the bed. 18 A. A certain way he'd try to move 19 my shoulder, it would pop. Boy, I'd 20 nearly about come off the bed. 21 Q. And the bed being the table? 22 A. The table he was doing physical 23 therapy on.</p> |

31 (Pages 121 to 124)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 125</p> <p>1 Q. Okay. You have to forgive me. 2 I was thinking about my children jumping 3 on the bed, and I was wondering why -- 4 A. And he had a lady helping him. 5 You know, she vouched for the same thing. 6 She said, "I ain't never seen one pop 7 like that." They couldn't figure it out 8 either. He even went over there and 9 talked to Howorth, and Howorth said he 10 couldn't figure it out. 11 Q. All right. And the last time 12 you went to see Dr. Howorth was in May of 13 2005; right? 14 A. Yeah. He give me a Cortisone 15 shot the last time I've been back to see 16 him. 17 Q. Okay. Did he release you at 18 that time? 19 A. Yeah. 20 Q. Or did he say don't come back? 21 A. He said, "You can come back in 22 six months. I can give you another 23 Cortisone." He said, "That's about all I</p> | <p style="text-align: right;">Page 127</p> <p>1 question is: If Dr. Howorth told you 2 that you didn't need to come back, did 3 Ms. Victoria or somebody at CMI call you 4 and say -- 5 A. Huh-uh, not as I know of. 6 Q. Okay. Have you tried to make a 7 phone call to ask them, "Hey, can I go 8 back to the doctor"? 9 A. No. 10 Q. Have you thought about it? 11 A. I'm not employed there anymore. 12 Q. Okay. 13 A. Because if I go back, I'll have 14 to pay for it myself. 15 Q. Okay. And that's just what 16 you've concluded on your own; right? 17 A. If I don't work there anymore, 18 I'm pretty sure they wouldn't pay it. 19 Q. Okay. So, the last time you saw 20 Dr. Howorth, you had stopped working for 21 a couple of months? 22 A. Yeah, because I had to go have 23 all this other stuff done.</p> |
| <p style="text-align: right;">Page 126</p> <p>1 can do for you. He said, "There's so 2 much bursitis in it, that's about all I 3 can do." He said, "I can't give them to 4 you but twice a year." 5 Q. Did you go back in November? 6 A. I hadn't been back. 7 Q. Why not? 8 A. I just hadn't been back. See, I 9 have to pay for it now because workman's 10 comp is through with me I guess. So, I'd 11 have to pay for it out of my pocket. 12 Q. How do you know worker's comp is 13 through with you? 14 A. Well, I ain't been back since 15 April. 16 Q. Okay. But did somebody at 17 worker's comp tell you, "Okay. We're 18 done. You're on your own"? 19 A. After he dismissed me. 20 Q. Okay. 21 A. After he dismissed me, I went 22 and had all these other surgeries done. 23 Q. Okay. But if doctor -- well, my</p> | <p style="text-align: right;">Page 128</p> <p>1 Q. For the leg. Okay. 2 And I may have asked you this 3 early on, but do you remember the actual 4 day that you told Wal-Mart, "Okay. I'm 5 not coming back. I can't work anymore"? 6 A. I went up there it was in 7 August. 8 Q. Of last year? 9 A. August of last year. And she 10 said, "We thought you was still on 11 leave." I said, "No." I said, "He told 12 me I could come back." And she said, 13 "Well, he give you another 30-day leave." 14 I said, "I didn't even know it." You 15 know, they had extended it 30 days, and I 16 didn't even know it. And this was in 17 August. And she said, "Well, what are 18 you going to do?" I said, "Well, I 19 can't -- my legs won't let me work, and 20 my shoulder won't let me work. I guess 21 I'll have to take a medical leave, I 22 mean, a medical discharge." She said, 23 "Okay. If that's the way you -- you</p> |

32 (Pages 125 to 128)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 129</p> <p>1 know, if you can't work, you know, you 2 can't work." 3 Q. Did anybody at the store 4 encourage you to come back? 5 A. No. 6 Q. To come back to work? 7 A. (Witness nods head negatively.) 8 Q. The people at the store were 9 always fine to you, weren't they? They 10 weren't ever not nice or -- 11 A. I didn't get along with Jonathan 12 that good. 13 Q. Who's Jonathan? 14 A. He was the manager. He was the 15 head manager. 16 Q. All right. 17 A. But I dealt with him, but, you 18 know. 19 Q. Have you been seen by any other 20 doctor since May of 2005 for your 21 shoulder? 22 A. Huh-uh (negative.) 23 Q. Is that a no?</p> | <p style="text-align: right;">Page 131</p> <p>1 A. No. 2 Q. And you're not getting any 3 additional benefits right now? 4 A. I ain't getting nothing. I 5 ain't got nothing since March. I had 6 short-term disability, but I paid for 7 that out of my check. And when they 8 released me on my legs and everything, 9 they stopped that. And I couldn't work. 10 So, I couldn't draw my unemployment. 11 When you ain't able to work, you can't 12 draw unemployment. So, I'm just stuck. 13 I haven't drawn any money since May of 14 last year. 15 Q. So, you got disability through 16 your job at Wal-Mart? 17 A. Yeah. I paid it in myself, 18 short-term disability. 19 Q. And after you left Wal-Mart -- 20 A. When these surgeries, that's all 21 I drew. 22 Q. And you're still out of work? 23 A. Yeah.</p> |
| <p style="text-align: right;">Page 130</p> <p>1 A. No. 2 Q. Okay. And did Dr. Howorth 3 actually -- do you remember him saying, 4 "You are released, you can go back"? 5 A. He never did release me back to 6 go back to full duty on my arm. 7 Q. Okay. He always just said that 8 you would be on light duty? 9 A. Limited. Limited to no more 10 than five pounds. 11 Q. Did he ever tell you that he 12 thought that one day you'd be able to go 13 back to work with no restrictions? 14 A. He told me I probably was going 15 to have trouble out of it from now on. 16 Q. But do you recall him ever 17 saying, "In two months, you're going to 18 be able to go back to work without any 19 problems"? 20 A. No, he never did tell me that. 21 Q. Now, you have not filed another 22 lawsuit for worker's compensation 23 benefits?</p> | <p style="text-align: right;">Page 132</p> <p>1 Q. Do you think you'll ever be able 2 to go back to work anywhere? 3 A. Not with my leg and shoulder 4 like it is. 5 Q. Okay. Which is worse, your leg 6 or your shoulder? 7 A. Well, it's hard to say. One of 8 them is hurting all the time. 9 Q. Okay. But it's a combination of 10 the two? 11 A. Yeah. It's hard to sleep on 12 this side, and it's hard to sleep on this 13 side (indicating). 14 Q. How long are you able to like 15 stand up without your legs just 16 getting -- do they go numb? 17 A. Oh, yeah. I can't even feel my 18 feet right now. See, when he went in 19 here, they sent me to -- he told me they 20 probably hit a nerve right here in this 21 one because this is just dead down 22 through here. This whole leg right in 23 here is just dead (indicating).</p> |

33 (Pages 129 to 132)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 133</p> <p>1 Q. You're hitting your shin?</p> <p>2 A. Yeah, it's dead. And it's</p> <p>3 just -- and I ain't got no feeling in</p> <p>4 here. I can't even feel my toes.</p> <p>5 Q. Do you ever have feeling in your</p> <p>6 toes?</p> <p>7 A. They just stay numb and cold.</p> <p>8 Q. Numb and cold?</p> <p>9 A. He said he may have to go back</p> <p>10 and do the artery in this leg too. He's</p> <p>11 not for sure.</p> <p>12 Q. But you're indicating the right</p> <p>13 leg now?</p> <p>14 A. Yeah. He said I've got to go</p> <p>15 back -- I've got to go back the end of</p> <p>16 this month. It will be a six-month</p> <p>17 checkup. He'd check the circulation in</p> <p>18 my legs again.</p> <p>19 Q. Okay. How is the circulation in</p> <p>20 your left leg since they did that</p> <p>21 surgery?</p> <p>22 A. It still hurts every day. And</p> <p>23 my knee swells up, my ankle swells up</p> | <p style="text-align: right;">Page 135</p> <p>1 A. April 22nd last year.</p> <p>2 Q. And you've been to the doctor to</p> <p>3 fill out the disability exam?</p> <p>4 A. Yeah. They sent me to</p> <p>5 Dr. Peterson, then they sent me to</p> <p>6 Birmingham, they sent me to a</p> <p>7 psychiatrist and everywhere else.</p> <p>8 Q. Okay. Where did you go see a</p> <p>9 psychiatrist?</p> <p>10 A. I seen Dr. -- I think her name</p> <p>11 is Dr. Kurtz in Opelika. I got all kind</p> <p>12 of doctor's numbers wrote down. I think</p> <p>13 her name is Robin Kurtz.</p> <p>14 Q. What has she said for you?</p> <p>15 A. Psychiatrist?</p> <p>16 Q. Yeah.</p> <p>17 A. She said, "If I could put you on</p> <p>18 the disability, I would put you on it in</p> <p>19 a heartbeat." She said, "You need it</p> <p>20 bad." Robin Kurtz in Opelika. Kurtz is</p> <p>21 K-u-r-t-z.</p> <p>22 And they sent me to Dr. Bruce</p> <p>23 Pava in Birmingham.</p> |
| <p style="text-align: right;">Page 134</p> <p>1 every night. And it's just swelled up so</p> <p>2 bad I can't hardly stand it.</p> <p>3 Q. Right leg about the same as the</p> <p>4 left leg?</p> <p>5 A. Well, it ain't quite as bad as</p> <p>6 the left one.</p> <p>7 Q. Is it getting worse?</p> <p>8 A. Yeah, I don't think they're</p> <p>9 getting any better.</p> <p>10 Q. No. I was asking is the right</p> <p>11 one getting worse.</p> <p>12 A. Oh. Yeah, it's worser than what</p> <p>13 it was because I try to put more weight</p> <p>14 on it to stay off my left one as much.</p> <p>15 And, so, it's hurting me more on my right</p> <p>16 one now because I'm trying to, you know,</p> <p>17 keep some of the weight off my left one</p> <p>18 because it hurts so bad.</p> <p>19 Q. Okay. Now, you filed a claim</p> <p>20 for Social Security disability; right?</p> <p>21 A. Disability, uh-huh.</p> <p>22 Q. Do you remember when you did</p> <p>23 that?</p> | <p style="text-align: right;">Page 136</p> <p>1 Q. Is he also a psychiatrist?</p> <p>2 A. No. He's the one on my legs.</p> <p>3 He's the one that he believed he hit a</p> <p>4 nerve in this leg when he done the</p> <p>5 surgery, that's the reason it's dead.</p> <p>6 Q. Where did you have that surgery</p> <p>7 done?</p> <p>8 A. Opelika.</p> <p>9 Q. Okay. So, he came down here to</p> <p>10 do it?</p> <p>11 A. Dr. Lazenby is already in</p> <p>12 Opelika.</p> <p>13 Q. Oh, I'm sorry. I thought you</p> <p>14 said Pava was in Birmingham.</p> <p>15 A. No. They sent me -- the</p> <p>16 disability people sent me to Birmingham</p> <p>17 to Dr. Pava.</p> <p>18 Q. Okay. To look at your legs?</p> <p>19 A. To look at my legs. But he</p> <p>20 wouldn't tell me nothing. He said they'd</p> <p>21 have to tell me that.</p> <p>22 Q. All right.</p> <p>23 MR. BROWN: And you're</p> |

34 (Pages 133 to 136)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 137</p> <p>1 representing him on the Social Security; 2 right? 3 MR. TINNEY: Right. 4 Q. (By Mr. Brown) Following the 5 femoral bypass that you had, did any of 6 those doctors say that you should have 7 been able to go back to work, or did 8 they -- was there ever a point in time 9 where they said, you know, after you 10 recuperate for a month or so -- 11 A. Dr. Lazenby told me it was up to 12 me. He said, "You know how your legs 13 feel." He said, "If you can work on 14 them, you can work on them. If you 15 can't, you know, that will be up to you." 16 And I went back and tried it, and I 17 couldn't do it. My legs was hurting me 18 so bad I couldn't do it. 19 Q. You went back and tried at 20 Wal-Mart? 21 A. Yeah. But I still wasn't using 22 my arm. 23 Q. Okay. I understand that.</p> | <p style="text-align: right;">Page 139</p> <p>1 MR. TINNEY: Anniston. You 2 know, it's a local office. 3 MR. BROWN: I was wondering if 4 it was Anniston or if it was down in 5 Opelika. 6 MR. TINNEY: Yeah, Anniston. 7 THE WITNESS: Anniston. They 8 sent me a letter and denied it about six 9 or seven months ago. 10 Q. (By Mr. Brown) All right. 11 Worker's comp -- I may have asked you, I 12 may not have. If I did, I apologize. 13 But worker's comp paid for all your 14 physical therapy too; right? 15 A. Yeah. 16 Q. Okay. 17 A. They paid for that and the 18 medicine, whatever I had to have. 19 Q. And I know that we've talked a 20 lot about the conversations that you had 21 with Ms. Heppes. But the conversations 22 that you are critical of and that are 23 based -- that this lawsuit is based on,</p> |
| <p style="text-align: right;">Page 138</p> <p>1 A. But my legs just wouldn't let me 2 do it after I had the surgery. It was 3 just hurting so bad I couldn't do it. 4 Q. How many times -- how many days 5 did you try to go back to work at 6 Wal-Mart? 7 A. Well, after he got through in 8 March, I went back and worked -- I don't 9 think I worked but about one week. I 10 couldn't stand it. So, I took a -- they 11 give me a little 30-day leave. And then 12 I went back and I tried it, and I 13 couldn't do it. So, the only alternative 14 I had was to take a medical discharge. 15 Q. And your Social Security, you 16 have not gotten anything yet? 17 A. No, they denied it. 18 Q. Where was that filed? Do you 19 know? 20 A. What? 21 Q. The Social Security claim. 22 A. He's handling my Social 23 Security.</p> | <p style="text-align: right;">Page 140</p> <p>1 are the conversations that occurred 2 between October the 27th when Dr. Howorth 3 said you need surgery and November the 4 25th or 26th when they called you and 5 said you can get it done? 6 A. Yeah. 7 Q. Okay. So, it's about a 8 one-month period of time? 9 A. Well, I got hurt on the 27th of 10 September is when I got hurt. 11 Q. All right. Between the 28th of 12 September when you got hurt -- 13 A. Uh-huh. 14 Q. -- the times that you were 15 seeing Dr. Shirah -- 16 A. Yeah. 17 Q. -- and she was talking to you or 18 you were having any conversations with 19 her, that was okay; right? 20 A. Yeah. I was just taking pain 21 pills and everything, but it wasn't 22 getting any better. 23 Q. But that's when Dr. Shirah was</p> |

35 (Pages 137 to 140)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 141</p> <p>1 saying, you know, I'm not sure if it's a 2 strain or -- 3 A. Yeah. 4 Q. Okay. 5 A. Just what he treated me for was 6 a muscle pull to start with. 7 Q. Okay. But you weren't yelling 8 at -- 9 A. No. 10 Q. Or I'm sorry. Not yelling. You 11 weren't talking to anybody about, "I need 12 surgery" until Dr. Howorth told you that 13 you needed it? 14 A. No. The second week I went to 15 Dr. Shirah, I told Dr. Shirah, I said, 16 "Something is not right." He said, 17 "Well, you're probably right. We're 18 going to have to do an MRI. That will be 19 the best thing we can do before we'll 20 ever know what's wrong with it." 21 Q. Okay. 22 A. So, we set me up with Oxford, 23 and I went the next following week.</p> | <p style="text-align: right;">Page 143</p> <p>1 A. A pretty good little ways. 2 MR. BROWN: It's not 70 miles, 3 is it? 4 MR. TINNEY: About 80. 5 THE WITNESS: It wasn't but 6 about 45 to Alex City. 7 Q. (By Mr. Brown) Okay. 8 A. 45, 46. 9 Q. All right. Were you happy with 10 Dr. Howorth? 11 A. He was a good doctor, you know. 12 He just wanted me in there earlier than 13 what they let me get in. 14 Q. Okay. Have you told me about 15 every conversation that you had with 16 Ms. Heppes? 17 A. I don't know exactly how many I 18 had. Several. 19 Q. Okay. But what your 20 recollection is is just the gist of what 21 y'all were talking about; right? 22 A. Yeah. 23 Q. If you look back at it, can you</p> |
| <p style="text-align: right;">Page 142</p> <p>1 Q. That was on the 18th or the 19th 2 of October? 3 A. 19th of October. 4 Q. All right. 5 A. And I took it back to him. 6 Q. All right. And that was on the 7 22nd of October? 8 A. And he said there ain't nothing 9 else I can do for you. 10 Q. And then he said you've got to 11 go to an orthopedist? 12 A. Orthopedic surgeon. 13 Q. Somebody called you and told you 14 to go to Dr. Howorth? They originally 15 wanted you to go to Gadsden? 16 A. Yeah. He called Victoria 17 himself, and she finally set me up in 18 Alex City. 19 Q. Okay. And that was because it 20 was closer for you to drive? 21 A. Yeah. 22 Q. How far is it from here to 23 Gadsden, about 70 miles?</p> | <p style="text-align: right;">Page 144</p> <p>1 close your eyes and specifically recall 2 one particular conversation over all the 3 others? 4 A. Uh-huh (affirmative). 5 Q. Okay. 6 A. It's when I got back from Alex 7 City, and she had denied me from having 8 surgery on that Monday. I went to the 9 store and went in there and called and 10 called her from the store and told her 11 she was killing me. 12 Q. Okay. 13 A. She said, "We're not planning on 14 killing you." I said, "But he wants me 15 to have surgery, and you won't let me 16 have it." 17 Q. And that was within a couple of 18 days after you first saw Dr. Howorth; 19 right? 20 A. That was when I got back from 21 Alex City. 22 Q. The same day? 23 A. She cancelled it before I could</p> |

36 (Pages 141 to 144)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 145</p> <p>1 even get back home.</p> <p>2 Q. But the same -- but it was the</p> <p>3 same day?</p> <p>4 A. Uh-huh (affirmative).</p> <p>5 Q. Okay. That was yes?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. When you left</p> <p>8 Dr. Howorth's office, did you have an</p> <p>9 appointment card to be at Russell</p> <p>10 Hospital or anything like that?</p> <p>11 A. They told me to go to the</p> <p>12 hospital on that Friday and get</p> <p>13 preadmitted and be ready to have surgery</p> <p>14 on Monday. When I left there, that's all</p> <p>15 I knowed. By the time I got home, my</p> <p>16 mother-in-law called and said Victoria</p> <p>17 had done cancelled it before I could even</p> <p>18 get home. So, I called him back. He</p> <p>19 said he don't know why she cancelled it.</p> <p>20 He said, "But you need the surgery."</p> <p>21 Q. And you called him on the same</p> <p>22 day?</p> <p>23 A. Yeah.</p> | <p style="text-align: right;">Page 147</p> <p>1 last name -- is the only one I ever</p> <p>2 talked to on workman's comp.</p> <p>3 Q. Okay.</p> <p>4 A. She's the only one I talked to.</p> <p>5 Q. And she just told you that she</p> <p>6 wanted two other doctors to look at it?</p> <p>7 A. Uh-huh (affirmative).</p> <p>8 Q. She didn't tell you that she</p> <p>9 wanted you to be seen by --</p> <p>10 A. No.</p> <p>11 Q. -- just she said she wanted two</p> <p>12 other doctors?</p> <p>13 A. She just said she needed all the</p> <p>14 paperwork they got and she needed the</p> <p>15 MRI's, that she had two more company</p> <p>16 doctors that she wanted to look at it.</p> <p>17 That's when I asked her why. I said,</p> <p>18 "You've already got two."</p> <p>19 MR. TINNEY: You already</p> <p>20 answered the question several times.</p> <p>21 THE WITNESS: Yeah. I just</p> <p>22 couldn't figure it out.</p> <p>23 Q. (By Mr. Brown) Did you take any</p> |
| <p style="text-align: right;">Page 146</p> <p>1 Q. Did you talk to him or Amy?</p> <p>2 A. I talked to Amy. And she said</p> <p>3 that she had cancelled it. She needed</p> <p>4 more paperwork and wanted more doctors to</p> <p>5 look at the MRI before they do anything.</p> <p>6 Q. Okay. And it's your testimony</p> <p>7 that that was on the 27th; right?</p> <p>8 A. It was the first time I seen</p> <p>9 him, yeah. He wanted me on that Monday</p> <p>10 to have surgery. They put it off another</p> <p>11 28 days is what they did.</p> <p>12 Q. Do you know if you ever talked</p> <p>13 to anybody named Annie Martin?</p> <p>14 A. I don't remember no Annie</p> <p>15 Martin.</p> <p>16 Q. Do you know if you ever talked</p> <p>17 to anybody named Becky Quisenberry?</p> <p>18 A. I don't know no Becky</p> <p>19 Quisenberry either.</p> <p>20 Q. Do you know if you ever talked</p> <p>21 to anybody named Ms. Abbott?</p> <p>22 A. Not as I know of.</p> <p>23 Ms. Victoria -- I didn't even know her</p> | <p style="text-align: right;">Page 148</p> <p>1 notes of any of these conversations?</p> <p>2 A. No.</p> <p>3 Q. You didn't record any of them,</p> <p>4 did you?</p> <p>5 A. No.</p> <p>6 Q. Do you remember the</p> <p>7 interrogatories, the questions that I</p> <p>8 sent that you had to get answered and you</p> <p>9 signed the responses to? Do you remember</p> <p>10 those?</p> <p>11 A. Huh-uh (negative).</p> <p>12 Q. Okay. I just want to ask you</p> <p>13 about a couple of them. Before I do</p> <p>14 that --</p> <p>15 A. Oh, yeah. I remember you sent</p> <p>16 some papers up here, and I signed them.</p> <p>17 Q. Okay. But you signed that,</p> <p>18 though; right?</p> <p>19 A. Yeah. I remember signing it,</p> <p>20 yeah. I understand what you're talking</p> <p>21 about now.</p> <p>22 Q. Okay.</p> <p>23 A. Yeah.</p> |

37 (Pages 145 to 148)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 149</p> <p>1 MR. BROWN: And, John, this is</p> <p>2 one of the ones that we talked about</p> <p>3 earlier. I just want to make sure I</p> <p>4 understand.</p> <p>5 Q. In Interrogatory No. 34, it says</p> <p>6 "Indicate whether the Plaintiff claims</p> <p>7 that any injury or permanent damage to</p> <p>8 his shoulder is the result of the</p> <p>9 negligence of any physician or hospital."</p> <p>10 And you said, "To the best of the</p> <p>11 Plaintiff's knowledge and belief, yes."</p> <p>12 Could you tell me is there anything that</p> <p>13 any of the doctors or any of the</p> <p>14 hospitals did that you think they did</p> <p>15 wrong with your shoulder?</p> <p>16 A. The only thing they done wrong</p> <p>17 is they just waited too long to get it</p> <p>18 fixed.</p> <p>19 Q. Okay.</p> <p>20 A. So it really wasn't the doctor.</p> <p>21 Q. All right. I just wanted to --</p> <p>22 I thought that's what we had talked</p> <p>23 about.</p> | <p style="text-align: right;">Page 151</p> <p>1 the records?</p> <p>2 A. Yeah, I got them faxed to --</p> <p>3 see, my daughter-in-law worked for Sandy</p> <p>4 Holliday at that time.</p> <p>5 Q. What is Sandy Holliday?</p> <p>6 MR. TINNEY: He's a local</p> <p>7 lawyer.</p> <p>8 THE WITNESS: A local lawyer.</p> <p>9 Q. (By Mr. Brown) Okay.</p> <p>10 A. She worked at his office. So,</p> <p>11 she -- that's the only place I could get</p> <p>12 them faxed to.</p> <p>13 Q. Okay.</p> <p>14 A. Because when I was trying to get</p> <p>15 my disability, I had to have all my</p> <p>16 records faxed to me.</p> <p>17 Q. Okay. And they never faxed you</p> <p>18 the records; is that right?</p> <p>19 A. I got them all except for</p> <p>20 Dr. Rhodes, I think.</p> <p>21 Q. Were they faxed to you.</p> <p>22 A. (Witness nods head</p> <p>23 affirmatively.)</p> |
| <p style="text-align: right;">Page 150</p> <p>1 So, if you said "yes" --</p> <p>2 A. I might not have understood what</p> <p>3 it was.</p> <p>4 Q. Okay. So, you've explained your</p> <p>5 answer better today than you did when you</p> <p>6 answered it?</p> <p>7 A. Yeah.</p> <p>8 Q. That's fine.</p> <p>9 Now, in Interrogatory No. 30, it</p> <p>10 makes reference to part of your</p> <p>11 complaint. And in your complaint --</p> <p>12 well, I asked you on the suppression</p> <p>13 claim to "describe what action you took</p> <p>14 to obtain your medical records from</p> <p>15 Dr. Howorth or Dr. Shirah during the time</p> <p>16 that you claimed that CMI were the only</p> <p>17 ones getting medical records." And you</p> <p>18 said that you requested that the records</p> <p>19 be faxed to his daughter-in-law?</p> <p>20 A. Uh-huh (affirmative).</p> <p>21 Q. So, did you ask -- during some</p> <p>22 of these conversations, did you ask Amy</p> <p>23 or somebody at Dr. Howorth's to fax you</p> | <p style="text-align: right;">Page 152</p> <p>1 Q. Is that yes?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. Before you filed this</p> <p>4 lawsuit or after you filed this lawsuit?</p> <p>5 A. After.</p> <p>6 Q. Okay. So, it was after you had</p> <p>7 already hired Mr. Tinney, but before you</p> <p>8 had done the disability stuff; right?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Did you have to pay for</p> <p>11 the records? They gave them to you --</p> <p>12 A. Right.</p> <p>13 Q. -- free; right? I'm sorry.</p> <p>14 That was a bad question. I asked you two</p> <p>15 questions at once. They sent you the</p> <p>16 records?</p> <p>17 A. Yeah.</p> <p>18 Q. Did you have to pay for them?</p> <p>19 A. Huh-uh (negative).</p> <p>20 Q. No?</p> <p>21 A. I told them no. I didn't have</p> <p>22 to pay for it. I just told them I was</p> <p>23 trying to get my disability, I needed my</p> |

38 (Pages 149 to 152)

FREEDOM COURT REPORTING

| Page 153 | Page 155 |
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| <p>1 records.</p> <p>2 Q. All right. If CMI has paid for</p> <p>3 all your medical bills and they've paid</p> <p>4 you the temporary total payments, you</p> <p>5 don't contend that they owe you any</p> <p>6 additional benefits right now, do you?</p> <p>7 A. All the pain and suffering I</p> <p>8 went through.</p> <p>9 Q. Okay. Just things related to</p> <p>10 this lawsuit; is that right?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay.</p> <p>13 MR. TINNEY: And just for the</p> <p>14 record so that, you know, we're operating</p> <p>15 under any, you know, misassumption, if he</p> <p>16 gets a disability rating, they may owe</p> <p>17 him more comp.</p> <p>18 MR. BROWN: If it's -- yeah.</p> <p>19 MR. TINNEY: Yeah. Plus</p> <p>20 anything -- you know, any medical</p> <p>21 associated with it. I mean, they own any</p> <p>22 benefits they owe under the --</p> <p>23 MR. BROWN: But as of right now,</p> | <p>1 A. No.</p> <p>2 Q. Now, have you been to any</p> <p>3 other -- other than the psychiatrist that</p> <p>4 you went to see for your disability, have</p> <p>5 you been to any other psychiatrist or</p> <p>6 psychologist for anything related to your</p> <p>7 shoulder?</p> <p>8 A. Huh-uh, no.</p> <p>9 Q. Have you been to any kind of</p> <p>10 counseling?</p> <p>11 A. No.</p> <p>12 Q. Have you been to any kind of</p> <p>13 pain management?</p> <p>14 A. No.</p> <p>15 Q. How has this shoulder surgery</p> <p>16 affected you?</p> <p>17 A. It affects me a lot.</p> <p>18 Q. Okay. Well, tell me as best you</p> <p>19 can how.</p> <p>20 A. I barely can use it a lot of</p> <p>21 days. I can't raise it up.</p> <p>22 Q. Okay. How else?</p> <p>23 A. I just can't raise it up. I can</p> |
| Page 154 | Page 156 |
| <p>1 you don't know of any person whose given</p> <p>2 him any permanent partial disability upon</p> <p>3 which an award could be based.</p> <p>4 MR. TINNEY: No.</p> <p>5 MR. BROWN: All right. We may</p> <p>6 want to talk about that after we get</p> <p>7 through.</p> <p>8 MR. TINNEY: Yeah. I have not</p> <p>9 pursued it, but I'm sure there's</p> <p>10 something there.</p> <p>11 MR. BROWN: Okay.</p> <p>12 Q. And since you filed this</p> <p>13 lawsuit, you have not talked to</p> <p>14 Ms. Heppes anymore; is that right?</p> <p>15 A. Huh-uh (negative).</p> <p>16 Q. Was that no?</p> <p>17 A. No.</p> <p>18 Q. You haven't asked for another</p> <p>19 doctor?</p> <p>20 A. No.</p> <p>21 Q. And you haven't asked for</p> <p>22 authority or the ability to go back to</p> <p>23 Dr. Howorth or anybody else?</p> | <p>1 use it like right here, you know. But I</p> <p>2 can't just -- I can't do none of this.</p> <p>3 It won't go up. I have to push it up</p> <p>4 with my other arm. It's just like it</p> <p>5 catches. It don't want to go.</p> <p>6 Q. And I think I asked you this</p> <p>7 before. I probably did. But if you had</p> <p>8 not had the leg surgery, you would still</p> <p>9 be working, right, if your legs weren't</p> <p>10 bothering you?</p> <p>11 A. I probably still be working with</p> <p>12 one arm.</p> <p>13 Q. Okay. I understand.</p> <p>14 A. Yeah.</p> <p>15 Q. But you would still be working</p> <p>16 as best you could?</p> <p>17 A. Yeah, best I could.</p> <p>18 Q. Were there any activities that</p> <p>19 you -- any sports or hobbies that you did</p> <p>20 before the surgery that you can't do</p> <p>21 anymore?</p> <p>22 A. I ain't been able to play no</p> <p>23 sports in a while.</p> |

39 (Pages 153 to 156)

FREEDOM COURT REPORTING

| Page 157 | Page 159 |
|---|--|
| <p>1 Q. Okay. In how long?</p> <p>2 A. Well, I'm 51. I ain't played</p> <p>3 none since I was about 30-something years</p> <p>4 old.</p> <p>5 Q. Okay.</p> <p>6 A. It's been 20-something years, I</p> <p>7 imagine.</p> <p>8 Q. So, you're not going to come</p> <p>9 back later and say --</p> <p>10 A. No.</p> <p>11 Q. -- that you were on a church</p> <p>12 softball league or something like that</p> <p>13 before you hurt your shoulder?</p> <p>14 A. No. My leg won't let me do</p> <p>15 that. My shoulder won't either.</p> <p>16 Q. Well, but before your shoulder</p> <p>17 started hurting, you didn't do it?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did you hunt or fish?</p> <p>20 A. I ain't been fishing in three or</p> <p>21 four years. I don't even go hunting</p> <p>22 anymore.</p> <p>23 Q. Did you hunt before you hurt</p> | <p>1 A. I ain't been fishing in about</p> <p>2 three or four years.</p> <p>3 Q. Before the shoulder?</p> <p>4 A. Before the shoulder.</p> <p>5 Q. Okay. Were you a member of any</p> <p>6 church here locally?</p> <p>7 A. I'm a member of Midway Full</p> <p>8 Gospel Church.</p> <p>9 Q. Okay. And did you do any kind</p> <p>10 of church mission trips or anything</p> <p>11 before the surgery?</p> <p>12 A. No, sir.</p> <p>13 Q. Okay. Are you a member of any</p> <p>14 kind of civic clubs like Civitans or</p> <p>15 Jaycees?</p> <p>16 A. No, sir.</p> <p>17 Q. And you think -- or do you agree</p> <p>18 that it took a while to get the surgery</p> <p>19 done, longer than you wanted it to --</p> <p>20 A. Yes.</p> <p>21 Q. -- because of miscommunications</p> <p>22 between CMI and the doctors?</p> <p>23 A. Yes.</p> |
| Page 158 | Page 160 |
| <p>1 your shoulder?</p> <p>2 A. Oh, I use to hunt all the time.</p> <p>3 Q. Deer hunt, bird hunt, what kind</p> <p>4 of hunting?</p> <p>5 A. Squirrel hunting, something like</p> <p>6 that. I never did even deer hunt very</p> <p>7 much.</p> <p>8 Q. Okay. So, just squirrel</p> <p>9 hunting?</p> <p>10 A. See, I ain't really done any</p> <p>11 kind of fishing or hunting in years.</p> <p>12 Q. Okay. Before your shoulder</p> <p>13 injury?</p> <p>14 A. Yeah. I used to, yeah, a long</p> <p>15 time ago.</p> <p>16 Q. All right. How long before your</p> <p>17 shoulder injury did you last go hunting</p> <p>18 on a regular basis?</p> <p>19 A. I imagine it's been over ten</p> <p>20 years.</p> <p>21 Q. How long before the shoulder</p> <p>22 injury did you last go fishing on a</p> <p>23 regular basis?</p> | <p>1 MR. TINNEY: And I'm going to</p> <p>2 object to the, you know, the form of that</p> <p>3 question because we -- you classify it as</p> <p>4 miscommunications. We don't know, you</p> <p>5 know, what it is.</p> <p>6 Q. (By Mr. Brown) Well, and I'll</p> <p>7 define miscommunications as from your</p> <p>8 conversations with the doctor's office</p> <p>9 and from your conversations with</p> <p>10 Ms. Heppes, that both of those people,</p> <p>11 the doctor and CMI told you they were</p> <p>12 talking back and forth; right?</p> <p>13 A. Yeah. The doctor wanted to do</p> <p>14 it, and they didn't want to let him do</p> <p>15 it.</p> <p>16 Q. And they were saying, "We sent</p> <p>17 the records," and they were saying, "No,</p> <p>18 we don't have the records"?</p> <p>19 A. That's true.</p> <p>20 Q. Okay.</p> <p>21 A. That's true.</p> <p>22 Q. And it was that communication or</p> <p>23 lack of communication between those two</p> |

40 (Pages 157 to 160)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 161</p> <p>1 people that delayed you getting the 2 surgery? 3 MR. TINNEY: Now, I'm going to, 4 again, object, you know, to that. And I 5 guess I've got to instruct him to not 6 answer that question because the 7 decision -- you know, the decision as to 8 why he didn't get it didn't come from 9 him. 10 MR. BROWN: I understand. 11 MR. TINNEY: And he can't really 12 state, you know, what was the reason. 13 They were up there saying, you know, 14 we've got to get two doctors to look at 15 it. And that appears to be, you know, 16 what they were telling him. And we don't 17 know what the issue was between, you 18 know, them and the doctors. So, we 19 really can't state. 20 MR. BROWN: Okay. 21 Q. But in addition to her telling 22 you that she wanted to have other doctors 23 look at it --</p> | <p style="text-align: right;">Page 163</p> <p>1 was saying, "I did it all," she was 2 saying, "No, they haven't done it all." 3 A. Yeah. 4 Q. Okay. 5 A. And I was suffering. 6 Q. Did you ever make any phone 7 calls to them from any place other than 8 your mother's house or your 9 mother-in-law's house, the two numbers 10 you gave me earlier? 11 A. No. 12 Q. Oh. I think you said you called 13 them one time from the store? 14 A. I called them one time from the 15 store. 16 Q. Do you have copies of any of 17 your phone bills or your mother-in-law's 18 phone bills or your mother's phone bill 19 from that time? 20 A. I don't know what my 21 mother-in-law done with them. 22 Q. Okay. 23 A. She's 74 years old. I don't</p> |
| <p style="text-align: right;">Page 162</p> <p>1 A. Yes. 2 Q. -- she was also telling you that 3 it couldn't be approved until they got 4 all the paperwork from the doctor? 5 A. That's what she said. 6 Q. Okay. So, wanting to -- her 7 telling you allegedly that she wanted to 8 have it looked at by another doctor was 9 not the only reason that she told you 10 that she couldn't schedule surgery yet? 11 A. She just said she had to have 12 two more doctors look at it. 13 Q. And that she didn't have all the 14 documents or the paperwork from 15 Dr. Howorth's office; right? 16 A. Well, he told me he sent it the 17 same week she asked for it. 18 Q. Okay. 19 A. I called him myself. He said, I 20 sent everything I've got. It's up to her 21 now." 22 Q. And I understand that. But she 23 was also telling you -- while the doctor</p> | <p style="text-align: right;">Page 164</p> <p>1 know what she done with them. 2 Q. I understand. Did you have to 3 pay her back for the long distance phone 4 calls? 5 A. No. She told me not to worry 6 about it. 7 MR. TINNEY: Did we establish 8 whether that was an 800 number or not? 9 MR. BROWN: You know, I don't 10 know. 11 Q. Do you remember the number that 12 you called out there to CMI? 13 A. I got it here somewhere. I was 14 supposed to have had it in here. I can't 15 find it now. Victoria, workman's comp, 16 1-800-527-0566, extension 20 -- 17 Q. Well, hold on a minute. You 18 were talking faster than I can write. 19 (800) 527 -- 20 A. (800) 527-4566, extension 20776. 21 That's Victoria, workman's comp. 22 Q. Okay. Is that a business card 23 that you have here?</p> |

41 (Pages 161 to 164)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 165</p> <p>1 A. No. It's just a notebook I got 2 all my doctors wrote down, all my 3 medications I'm on, every doctor I've 4 went to and everything. 5 MR. BROWN: Would you object if 6 I looked at that? 7 MR. TINNEY: Let me look at it 8 first. 9 MR. BROWN: Okay. 10 THE WITNESS: It's just -- I got 11 every doctor wrote down where I was 12 trying to get my disability and where I, 13 you know, had to send to get my medical 14 records and first one thing and then 15 another. 16 Q. (By Mr. Brown) And other than 17 the one conversation that you had with 18 Dr. Howorth on the day you had surgery 19 where he said if we hadn't waited so 20 long, we could have done it a different 21 way -- 22 A. He said he could have lasered it 23 back.</p> | <p style="text-align: right;">Page 167</p> <p>1 problems with my therapy the reason I was 2 having so much pain with my therapy. 3 MR. TINNEY: I don't have a 4 problem with you looking at it. 5 THE WITNESS: It's just a bunch 6 of doctors and things I've had to go to. 7 Q. (By Mr. Brown) Who is Laura 8 Knight? 9 A. That's my aunt. She's had back 10 surgery. 11 Q. You hadn't never made phone 12 calls from her house, have you? 13 A. No. She lives in Lanett. 14 Q. Lanett? 15 A. Uh-huh. 16 Q. I'll go by her house on the way 17 home. The other phone numbers -- you 18 said your number is 863-1591. That's 19 your mom? 20 A. Huh-uh (negative). 21 Q. Or that's your mother-in-law? 22 A. That's -- my mother-in-law is 23 6195, my mother-in-law is. I don't think</p> |
| <p style="text-align: right;">Page 166</p> <p>1 Q. Okay. Has any other doctor told 2 you that your shoulder condition now is 3 the result of it taking too long to get 4 approval to have surgery? 5 A. No, because I've not been to 6 another one. 7 Q. Okay. And the only time 8 Dr. Howorth told you that was the day you 9 had the surgery itself? 10 A. Yes. He said, "I had to put 11 pins in it, and it was so full of 12 bursitis that I couldn't laser it, so I 13 had to do the best I could with it and 14 put pins in it to hold it. 15 Q. And he didn't repeat that 16 conversation during any of your office 17 visits, did he? 18 A. No. He just told me after he 19 x-rayed it one time, one of the screws 20 looked like it had moved and was 21 scrubbing my shoulder bone. 22 Q. I got you. 23 A. And he said that could be the</p> | <p style="text-align: right;">Page 168</p> <p>1 I got it wrote in there. 2 Q. Whose number 863-1591? 3 A. It ain't got no name on it? 4 Q. It says, "my NO." 5 A. Oh, I don't know. I don't know 6 what that number is doing in there then. 7 "My NO." I don't know. Oh. At one 8 time, I had a cell phone. At one time, 9 but I don't have it no more. That's what 10 that was. My phone. 11 Q. Okay. 12 A. That's the reason I had "My NO" 13 on it. At one time, I had a cell phone. 14 Q. All right. Did you ever call 15 CMI -- 16 A. No. 17 Q. -- from your cell phone? 18 A. Huh-uh. It costs too much 19 minutes. I had to buy my minutes, and I 20 just used my mother-in-law's. 21 Q. Was it a prepaid phone? 22 A. Yeah. 23 Q. Was it one of ones that you</p> |

42 (Pages 165 to 168)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 169</p> <p>1 like -- I don't know how prepaid --</p> <p>2 A. Go out at Wal-Mart and buy your</p> <p>3 minutes.</p> <p>4 Q. Okay. So, you didn't get a bill</p> <p>5 from like Sprint or something like that?</p> <p>6 A. No.</p> <p>7 MR. BROWN: Who is the provider</p> <p>8 in these areas?</p> <p>9 MR. TINNEY: I have no idea. I</p> <p>10 mean, we've got -- are you talking about</p> <p>11 all cell phone providers?</p> <p>12 THE WITNESS: Unicel.</p> <p>13 MR. TINNEY: Cingular, Unicel.</p> <p>14 And that's it really.</p> <p>15 MR. BROWN: Because, I mean, I</p> <p>16 have T-Mobile, and I have nothing up</p> <p>17 here.</p> <p>18 Q. Who is Dr. Russell Peterson?</p> <p>19 A. That's the one disability sent</p> <p>20 me to the first time.</p> <p>21 Q. Okay.</p> <p>22 A. He's out here in Roanoke. He</p> <p>23 built a new office right out yonder on</p> | <p style="text-align: right;">Page 171</p> <p>1 David Towers?</p> <p>2 A. Yeah, that's who pulled my</p> <p>3 teeth.</p> <p>4 Q. Okay.</p> <p>5 MR. BROWN: If you want to take</p> <p>6 about five minutes and let me look</p> <p>7 through my notes.</p> <p>8 (A short break was taken.)</p> <p>9 Q. (By Mr. Brown) Maybe we're</p> <p>10 wrapping up. Maybe I'm close to being</p> <p>11 through. And I'm sorry you've had to</p> <p>12 listen to me drum on so long.</p> <p>13 A. That's all right.</p> <p>14 Q. Have you told me about every</p> <p>15 conversation that you had with</p> <p>16 Ms. Heppes?</p> <p>17 A. As far as I know. I had so</p> <p>18 many, I couldn't really tell you exactly</p> <p>19 how many I did have.</p> <p>20 Q. Okay.</p> <p>21 A. And from September until I had</p> <p>22 my surgery, I really don't know.</p> <p>23 Q. Okay. And if you think of any</p> |
| <p style="text-align: right;">Page 170</p> <p>1 431.</p> <p>2 Q. 469 Price Street, Suite D,</p> <p>3 Roanoke?</p> <p>4 A. He's got a new office out there</p> <p>5 on 431 now.</p> <p>6 Q. Okay.</p> <p>7 A. That's who disability sent me to</p> <p>8 first.</p> <p>9 Q. And then Dr. Bruce Myles,</p> <p>10 M-y-l-e-s, Pava, P-a-v-a.</p> <p>11 A. That's Birmingham.</p> <p>12 Q. Okay. On Montclair Road. He's</p> <p>13 the one that disability sent you to?</p> <p>14 A. Disability sent me to them after</p> <p>15 they sent me to the psychiatrist.</p> <p>16 Q. And that was Robin Kurtz?</p> <p>17 A. Robin Kurtz.</p> <p>18 Q. And Dr. Busby, who is Dr. Busby?</p> <p>19 A. That's a dentist. I was calling</p> <p>20 around to get my teeth -- my top teeth</p> <p>21 pulled, and he was booked up, so I had to</p> <p>22 get another one?</p> <p>23 Q. Okay. And that would have been</p> | <p style="text-align: right;">Page 172</p> <p>1 other conversations, will you please just</p> <p>2 let Mr. Tinney know?</p> <p>3 A. Yeah.</p> <p>4 Q. I mean, you may be middle of</p> <p>5 the night tonight and sit straight up in</p> <p>6 bed thinking, "Oh. There was one</p> <p>7 conversation I needed to tell him about."</p> <p>8 And you've told me everything</p> <p>9 that you can remember about the</p> <p>10 conversations?</p> <p>11 A. Yeah.</p> <p>12 Q. And you've told me everything</p> <p>13 that you can remember that she told you,</p> <p>14 and you've told me everything that you</p> <p>15 can remember that you told her?</p> <p>16 A. Uh-huh (affirmative).</p> <p>17 Q. And have you told me about every</p> <p>18 conversation that you can remember with</p> <p>19 Dr. Howorth's office?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. Have you told me about --</p> <p>22 strike that.</p> <p>23 Before we get there, did you</p> |

43 (Pages 169 to 172)

FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 173</p> <p>1 have any conversations with the people at 2 the hospital before you went to do the 3 preregistration? 4 A. Huh-uh. I went down there and 5 got preregistered on Friday. And then 6 she checked my blood pressure, and she 7 kept me for a little while until my blood 8 pressure came down. And then she sent me 9 home. 10 Q. Okay. And you've told me 11 everything that you know to support your 12 claim that CMI wouldn't let you have 13 surgery; right? 14 A. They wouldn't let me have it. I 15 don't understand. 16 Q. But you've told me every 17 reason -- 18 A. Yeah. Yeah. 19 Q. Okay. 20 A. They kept saying they needed 21 more doctors. 22 MR. TINNEY: You don't need to 23 go over it again.</p> | <p style="text-align: right;">Page 175</p> <p>1 A. She called me at my 2 mother-in-law's and set me up an 3 appointment in Alex City. 4 Q. Did Ms. Heppes ever tell you, "I 5 don't think you need surgery"? 6 A. Well, to start with, she told me 7 she thought that I could do therapy. And 8 I just told her on the phone, I said, 9 "Dr. Shirah said it's tore up. You can't 10 do therapy on something that's tore up." 11 Q. But then after Dr. Howorth said 12 you need to have surgery -- 13 A. Yeah. 14 Q. -- did she ever call you and 15 tell you, "I'm not going to -- I don't 16 think you need surgery"? 17 A. No, she didn't say that. 18 Q. Okay. She said, "I've got to 19 get somebody else to look at it"? 20 A. Yes. 21 Q. Okay. And nobody from CMI told 22 you that, "you don't need surgery"; 23 right?</p> |
| <p style="text-align: right;">Page 174</p> <p>1 Q. (By Mr. Brown) Doctors and 2 records; right? 3 A. Doctors and records. 4 Q. I think we've established, you 5 don't know if CMI ever actually talked 6 with Dr. Shirah, do you? 7 A. He called Victoria. The day 8 after he found out I had to have surgery, 9 he called her, Dr. Shirah did. 10 Q. Okay. Is that while you were in 11 the room? 12 A. Yeah. 13 Q. Okay. 14 A. He said, "I'll go get in touch 15 with her and see what she wants -- what 16 doctor she wants to send you to, and I'll 17 let you know." 18 Q. Okay. So, he left the room, had 19 a conversation, and came back? 20 A. Had the conversation with her. 21 "She said she'd get with you and tell you 22 where to go." 23 Q. Okay. And she called you?</p> | <p style="text-align: right;">Page 176</p> <p>1 A. Not as I know of. 2 Q. Okay. 3 A. After he told them I needed 4 surgery, you know -- 5 Q. So, they never denied it, it 6 just took them too long to approve it? 7 A. It just took them too long to 8 approve it, you know, to get my 9 surgery -- to approve it. 10 MR. TINNEY: Well, now, I'm 11 going to object to the form of "denied." 12 I mean, we've gone over the call, you 13 know, stopping the surgery. I don't know 14 what your definition of "denied" is -- 15 MR. BROWN: Okay. 16 MR. TINNEY: -- but it was 17 stopped. 18 Q. (By Mr. Brown) Well, let me ask 19 it this way: They never told you, "You 20 cannot have surgery"? 21 A. No, they didn't tell me I 22 couldn't have it. They just told me they 23 needed more doctors to look at it.</p> |

44 (Pages 173 to 176)

FREEDOM COURT REPORTING

Page 177

1 Q. Okay.

2 A. They just kept saying that every
3 week.

4 Q. What information do you say or
5 do you contend that CMI withheld from
6 you? What information do you think they
7 had that they should have told you that
8 they didn't tell you?

9 A. I don't know. Just the only
10 thing is she said she wanted two more
11 doctors to look at it and she had to have
12 paperwork -- proper paperwork. I don't
13 know what she meant by that.

14 Q. Okay. If somebody told you that
15 you could go back to a doctor for your
16 shoulder, would you go?

17 A. If I thought it would do any
18 good. Because he told me the last time I
19 was there all he could do was give me
20 Cortisone, that's about all he could do
21 for it.

22 Q. But if somebody said you could,
23 you'd give it a try?

Page 178

1 A. Yeah, you know, if they could
2 help it.

3 Q. Okay.

4 MR. BROWN: I think that's all
5 the questions that I have. If I could
6 reserve to do a follow-up if we learn
7 anything else about any additional
8 medical treatment that he could possibly
9 have had. I'm not going to come back in
10 here and rehash anything.

11 MR. TINNEY: No problem.

12 MR. BROWN: Thank you.

13 ~oOo~

14 The deposition of
15 Emory S. Brown
16 concluded at 1:45 p.m.
17 on April 10, 2006

18 ~oOo~

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45 (Pages 177 to 178)

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